

17th November 1949] [Mr. President]

(4) Sri P. Veerabhadraswami.

(5) Sri L. Subbarama Reddi.

(6) Sri S. A. S. R. M. Ramanathan Chettiyar.

As the number of candidates nominated is equal to the number of vacancies to be filled, i.e., six, I hereby declare them to have been duly elected to the House Committee.

"In addition to the above, under rule 143 of the Madras Council Rules, I nominate the following two members to be members of the said Committee :—

(1) Mrs. M. Hensman.

(2) Sri R. Suryanarayana Rao."

GOVERNMENT BILL.

V.—THE MADRAS MAINTENANCE OF PUBLIC ORDER BILL, 1949 (L.A. BILL No. 24 OF 1949).

* THE HON. SRI K. MADHAVA MENON :—"Mr. President, Sir, I beg to move—

'that the Madras Maintenance of Public Order Bill, 1949 (L.A. Bill No. 24 of 1949), as passed by the Legislative Assembly be taken into consideration at once.'

"Sir, on the 28th June 1949, a report appeared in the '*Hindu*' to the effect that the Calcutta High Court had declared the West Bengal Security Act to be ineffective for the reason that there was no valid extension of the provisions of the Act after its expiry, as the Governor was not a party to the motion for an extension which was passed by the Provincial Legislature. This ruling was based on the decision of the Federal Court of India in Jyotindra Nath Gupta's case under the Bihar Maintenance of Public Order Act, 1947. The proviso to section 1 (3) of the Bihar Act was as follows :—

'Provided that the Provincial Government may, by notification, on a resolution passed by the Bihar Legislative Council, direct that this Act shall remain in force for a further period of one year with such modifications, if any, as may be specified in the notification.'

The Federal Court held that this proviso was *ultra vires* on the ground that it amounted to a delegation of legislative power by the Provincial Legislature to the Provincial Government, in so far as the latter is empowered (1) to extend the Act for a period of one year, which amounts to re-enacting the Act, and (2) to modify its provisions which may amount to a subtracting from, adding to or varying the existing provisions of the Act which is clearly a legislative power. It was held that the Provincial Legislature had no power to create a subordinate legislative authority delegating to it its own powers.

"It may, however, be mentioned that the provision in the Bihar Act was based on a number of precedents, English and Indian. In the English Act, the Reserve and Auxiliary Forces Act, 1939, there is a similar provision, which is as follows :—

'6 (1) Subject to the provisions of this section, this Act shall continue in force for the period of three years beginning with the date of the passing of this Act, and shall then expire:

[Sri K. Madhava Menon] [17th November 1949]

Provided that if, at any time while this Act is in force, an address is presented to His Majesty by each House of Parliament praying that this Act should be continued in force for a further period of one year from the time at which it would otherwise expire, His Majesty may by Order in Council direct that this Act shall continue in force for that further period.'

"Now, the Indian Press (Emergency Powers) Act, 1939 (Central Act XXIII of 1931), contains a similar provision, which reads as follows :—

'1 (3) It shall remain in force for one year only, but the Governor-General in Council may by notification in the *Gazette of India*, direct that it shall remain in force for a further period not exceeding one year.'

"The Foreign Exchange Regulation Act, 1947 (Act VII of 1947), also contains the following provision—

'1 (4) It shall remain in force for five years only, but the Central Government may, by notification in the official gazette, direct that it shall remain in force for a further period not exceeding three years.'

"The Control of Shipping Act (Central Act XXVI of 1947) contains the following provision :—

'1 (3) It shall be deemed to have come into force on the 25th day of March 1947, and it shall remain in force only up to the 31st day of March 1950:

Provided that the Central Government may, by notification in the official gazette, direct that it shall remain in force for a further period not exceeding one year.'

Similarly there are a number of Acts passed by the Central Legislature like the Delhi Premises (Requisition and Eviction) Act, 1947 (Act XLIX of 1947) and the Armed Forces (Special Powers) Act, 1947 (Act III of 1948) which empower Central Government by notification in the official gazette to direct that the Act shall remain in force for a further period not exceeding one year.

"Sir, some of the Central Acts such as the Foreign Exchange Regulation Act, 1947, and the Control of Shipping Act, 1947, are still in force. The Madras Maintenance of Public Order Act was passed by this House restricting the duration of the act to one year and gave power to the Government to extend it to another year by notification. Since Section 1 (4) of the Act also contained a provision for extending the continuance of the Act by notification of the Provincial Government and as the Act was being so extended from year to year, the Government began to entertain doubts towards the end of July 1949, as to whether the continuance of the Act from year to year was legal in the light of the judgment delivered by the Federal Court. The question was therefore examined and the Government were advised that a validating legislation had to be taken immediately. As the matter was so urgent that it could not wait even an emergent summoning of the Legislature, the session was prorogued by His Excellency the Governor on 2nd August 1949, and immediately after, on the same date, the Government of India were asked to obtain the Governor-General's instructions for the promulgation of an Ordinance. The Governor-General's approval was received on the 11th August 1949, and the Madras Maintenance of Public Order (Removal of Doubts and Amendment) Ordinance, 1949 (Madras Ordinance No. I of 1949) was promulgated the same day.

17th November 1949] [Sri K. Madhava Menon]

“ Opportunity was also taken to incorporate in the above Ordinance, a provision on the lines of the recent amendment introduced in the Central Provinces and Berar Public Safety Act, 1948, with a view to prohibit the questioning of the validity of a detention on the ground of any defect, vagueness or insufficiency, or any delay in the communications made to detenus. This is found in clause 4-A in the present Bill before you, which was amended to some extent in the Assembly from what it was in the original Bill as circulated. This provision was introduced at the instance of the Government of India who considered that there should be no room for any doubt that the communication to detenus of the grounds of detention is intended for the sole purpose of enabling them to make a representation to the Executive and that it should not be open to a court to examine the merits of the grounds so disclosed and decide whether these justify detention or not. The *bona fides* of an order of detention has been questioned merely because of a certain amount of delay in communicating the grounds, etc., the real reason for the delay being time taken to check up assertions and counter-assertions by detenus.

“ On the 10th October 1949, the Madras High Court, in delivering judgment in a batch of *Habeas Corpus* applications, in which the validity of the Madras Ordinance I of 1949 was questioned, held that, in view of the Federal Court's judgment in Jyotindra Nath Gupta's case under the Bihar Maintenance of Public Order Act, 1947, the Madras Maintenance of Public Order Act, 1947, ‘died a natural death’ on the 11th March 1948, since its extension by notification was not valid. The High Court also held that the sanction of the Madras Ordinance No. I of 1949 which purported to amend or give a declaration in respect of what was no longer in force was of no effect whatever, while anything re-enacted would be valid, and that accordingly, the only section of the Ordinance that was valid was section 3 (b) which stated that no action taken under the Act shall be called in question on the ground that the Act was not in force at that time.

“ The effect of this declaration of the High Court was that there was no Maintenance of Public Order Act in force in the Province. The Government were advised, and even the very judgment suggested, that the only manner in which the *status quo* could be restored was by re-enacting the entire provisions of the Act and since the Legislature was not in session—it having been prorogued before the promulgation of Madras Ordinance No. I of 1949—this had to be effected by means of an Ordinance, incorporating the entire provisions of the Act. The Governor-General's instructions for the promulgation of such an Ordinance were sought on the 10th October 1949 and were received on the 13th October 1949. The Madras Maintenance of Public Order Ordinance, 1949, was promulgated on the 15th October 1949.

“ The Bill before the House is a reproduction of the provisions of the Act which has already been passed by the Legislature, but it contains three variations. The first change is that we have fixed that the Act shall be in force till 30th September 1952. The original Act said that it shall be in force for one year, and subsequently it

[Sri K. Madhava Menon] [17th November 1949]

was amended, by which the life of the Act could be extended by notification. Now we have fixed that the Act shall be in force for three years.

“ The second variation is the addition of clause 4-A, the reasons for which I have already mentioned.

“ The third variation is the incorporation of the new clause 4-B. A question was raised some time ago as to what action could be taken against a detenu released on parole who contravenes the conditions of parole, and whether specific provision should be made for this purpose. We have been releasing detenus rather liberally, and a number of detenus released on parole either do not return or go underground. They do not conform to the conditions of parole and take advantage of their release to take part in subversive activities. If they are apprehended, no action can be taken against them for breach of the conditions of parole. The Government were advised to add the new clause 4-B in the Bill which has been prepared to replace the Madras Maintenance of Public Order Ordinance, on the basis of a similar provision in the Central Provinces and Berar law. Under this clause, if a detenu fails to conform to the conditions of parole, he can be charged and punished for it in the same manner as a prisoner who escapes from lawful custody. In these circumstances, the Bill as passed by the Assembly is placed before this House.

12 n. on. “ I have seen a number of amendments has been given notice of, particularly to delete clause 4-A, and the other amendments are to delete clauses 5 and 16. The original Act as passed by this House would have been reproduced here but for the judgment of the Federal Court. I have given the reason why clause 4-A has been introduced. The main reason for introducing it is to bring out the intention of the legislature in the Bill itself. The legislature has specifically laid down in section 16 that no order of detention passed by a District Magistrate or any other officer shall be questioned in a court of law. You may remember that an Ordinance was passed some time ago saying that all orders passed under the Public Safety Act should not be subject to the provisions of section 491 of the Criminal Procedure Code relating to the writ of *Habeas Corpus* and should not be questioned. That Ordinance was construed by a Full Bench of High Court. That decision of the High Court said that the jurisdiction of the court could not be ousted by the legislature, but it has laid down the conditions under which the court can interfere. It definitely said that the satisfaction about the sufficiency or the reasonableness of the grounds of detention was for the detaining authority and that it should not be canvassed by a court. Delay, vagueness or some such defect in the communication to the detenus has been canvassed as the ground for setting aside the order. The intention of the legislature is that it should not be canvassed like that. That intention is incorporated in the Bill by clause 4-A.

“ Regarding the other amendments, I shall reply after hearing the arguments of the movers after they move the amendments.”

17th November 1949]

MR. PRESIDENT :—“ The question is—

‘ that the Madras Maintenance of Public Order Bill, 1949 (L.A. Bill No. 24 of 1949), as passed by the Legislative Assembly be taken into consideration at once ’.”

SRI B. BHIMA RAO :—“ Mr. President, Sir, I support the Bill. In doing so, I want to make some suggestions for future guidance.

“ The Hon. Mr. Madhava Menon said that he came to know of the doubt with regard to the validity of the Act some time in June 1949. But actually the decision of the Federal Court in the Bihar case, wherein five Judges sat, was given on the 28th May 1949, and it appeared in the papers. The Federal Court decision is reported on page 175 of the All India Reporter. (Federal Court in 1949 September Part.) ”

THE HON. SRI K. MADHAVA MENON :—“ What is the date of issue of the journal? ”

SRI B. BHIMA RAO :—“ This was issued in the month of September.

“ The proper procedure for reviving the Act has been laid down in the decision itself. If it had been followed, there would have been no necessity for passing so many ordinances. Each of the Judges, especially the Chief Justice Khania, has said that the only apt manner of reviving the expired Act is by enacting a fresh Statute expressly saying that that Act is hereby revived.”

MR. PRESIDENT :—“ I find a motion under Rule 106 of the Council Rules for referring the Bill to a Select Committee standing in the name of Mr. Abdul Latif Farookhi and Dr. V. K. John. Is any one of the hon. Members moving the motion? If it is carried, there will be no need for detailed discussion.”

* DR. V. K. JOHN :—“ The motion under discussion is moved by the Hon. Minister under Rule 105. I think anybody can move an amendment to the proposition that the Bill be taken into consideration before the discussion on the motion is over. The motion for reference to Select Committee is moved under rule 106. I thought you would put this motion at the end of the first stage as it happened in the other House.”

* MR. PRESIDENT :—“ What I mean is even under a motion for Select Committee, the principles of the Bill can be discussed. But the motion must be there. If the hon. Member wants to move the motion, he should move it now.”

* DR. V. K. JOHN :—“ Mr. President, Sir, under rule 106 of the Council Rules, I move that the Bill be referred to a Select Committee of this House, as it was not referred either to a Select Committee of the Assembly or a Joint Select Committee. This Bill, in my humble opinion, is both a record and a limit—a record of the utter failure of the Government to persuade the men and

[Dr. V. K. John] [17th November 1949]

women of this province to desist from resorting to subversive activities, and a limit to the powers sought by the executive from the legislature. Arbitrary and extraordinary powers are sought—power for interfering with the liberty of a citizen, for taking over the property of people, for imposing censorship and collective fines and so on. I say this is a record of the failure of the Government. When the Maintenance of Public Order Act, 1947, was passed, its duration was limited to one year. The intention of the legislature at that time and the intention of the Congress Government then in power was that the Government would take such steps as would enable them to keep order and security in the province without these extraordinary powers at the end of one year. At the time of discussing the 1947 Bill, I said that it was Draconian in character and worse than martial law. Later on we find that the Government did nothing at all. They have simply extended the period of the Act, excluded jurisdiction of courts and passed ordinances. In the last few months the Government have passed ten ordinances. This Government seems to exist by controls and ordinances. If only they could abolish the courts in this land, they would be very pleased to do that. The Government's record is a record of failure.

“ Before I go into this Bill, I must make my position and the position of the Opposition quite clear. We are not in favour of subversive activities at all. We condemn subversive activities, arson, loot and murder on the part of any section of the public much more than the Government would condemn. We are behind the Government in the maintenance of law and order which is their responsibility. But we say there are two enemies to the public peace. The first is the Communists. I find from the pamphlet ‘Charge-sheet against the Communists’ published by the Government, though I do not subscribe to everything that is mentioned there, that the Communists have been engaged in murder, assault on villagers, Congressmen, public men and jail officials, interference with labour in such a way as to reduce production. I find that the Communists are attacking the police and kisans and engaging themselves in loot, arson, incendiarism, sabotage of railways and other important services, and do propaganda for using subversive methods to achieve their objects. I concede that any Government should be very very careful in dealing with a political opposition and I take it that the Communists are a political opposition. If the Communists attack innocent persons and do things which the Government charge them with, certainly we cannot tolerate them. But what have the Government done? I say there are two enemies to public peace, and the prosperity and happiness of this province. One is the Communists and the other is the Government of this province. It is paradoxical to see how the Government are strange bedfellows of the Communists. They ploughed the field for Communist activities. It is the Government, though not deliberately, who assist the Communists. What have the Government done during the last three years? One of the reasons why persons are converted to Communism and engage themselves in unlawful activities is the prevalence of acute unemployment in the province.

17th November 1949] [Dr. V. K. John]

The first thing the Government should provide for promoting the welfare of the common man is remunerative employment for every able-bodied man and woman in this province. They have done nothing of the sort. There are millions still unemployed. They have classified workers into agricultural and industrial and skilled and unskilled. They do not know the extent of unemployment. As a person in touch with the public in this province I know that unemployment is acute and it is becoming more and more acute. If a million persons were unemployed last year, to-day a million and a half are unemployed. The Government have no idea of the tragic poverty of the people of this province on account of unemployment. Then there is under-paid employment. The other day I asked a question whether the Government could not set a better example to other employers by giving their own employees adequate pay and dearness allowance. The reply of the Hon. Finance Minister was that the Government, unlike the private employers, were not making any profit, and that therefore they could not pay their employees well. The Government are setting a bad example. There are hundreds of employees under them who are actively in sympathy with Communists, simply because there is a discontented service.

"The Government have not yet attended to food production which is another essential requirement to prevent the spread of Communist propaganda in this province.

"Sir, the other day the Government published a printed statement, on reading which, I first thought that there was a mistake in print in regard to certain figures furnished therein, but afterwards I was assured that it was no printing mistake. In that statement they said, that the net result of their grow more food propaganda during all these years was a decline in production by about 659,000 tons of rice and 502,000 tons of millets during the current as compared with the normal. Sir, the Government have been engaged in the grow more food propaganda for the last three years, since they came into power. They have been spending crores of rupees on the grow more food propaganda, but the result is that this money has been helping only those engaged in such propaganda and not those whom it should help. They never established contact with the farmer on whose skill, initiative and enterprise, production depends. They lost all touch with the ryots and cultivators in the villages, with the result, that in their ignorance, in their patronage and in their drunkenness with power, they lost about 1,160,000 tons of foodgrains in the current year. This is the result of their grow more food campaign. Now the prices of commodities have shot up and in the Madras City, the cost of living index is 320, whereas in the other districts, it has even gone up to 500. Now, Sir, this rise in the cost of living is one of the reasons for the Communist propaganda spreading in this Province.. What have the Government done to counteract it? Nothing at all. Prices are going up every day. The cost of living is also increasing day by day. Blackmarketing is rampant in foodstuffs and other necessities of life. They are unable to prevent

12-15
p.m.

[Dr. V. K. John] [17th November 1949]

it, nor are they able to bring down prices. The Government live by controls and ordinances. They have controlled everything. Cloth and yarn, the stocks of which are in plenty with the mills have been controlled. I do not know why they are continuing these controls, and why they are not allowing the free market for the same. Import is under control; export is also under control; production of everything is under control; iron, steel, cement and in fact everything that you can think of, either manufactured in factories or produced from land or imported from abroad are all under control—why, simply because, the Government can have a very large number of underlings to hang upon them. To-day many Congress leaders cling round the Ministers and the Government, and do not go near the masses. That field is left to the Communists. Because every aspect of living is under control, people are suffering all round.

“ Now let me take the taxes. Sir, I would throw the direct responsibility for this rise in the cost of living, on the Government themselves, because they have increased the sales-tax on all articles of food, by 15 to 20 per cent. As a result of experimenting on their various fads, they have lost crores of rupees. By their scheme of the nationalization of the City bus transport, they have lost lakhs of rupees. By persisting in their fad of prohibition, they are losing an annual revenue of Rs. 20 crores. Prohibition has only resulted in illicit distillation, and the Rs. 20 crores of annual revenue which could have been profitably utilized for production and for keeping down the cost of living is now lost to the Government. On the other hand, unemployment is increasing as also under-paid employment.

“ Sir, I can understand a Government, carrying on their administration under trial and error. That is perhaps unavoidable and perhaps sometimes necessary, for any Government. Sir, the other day, somebody characterised this Government as a Government by amateurs. I entirely agree with this view. I make no complaint against them, because it is human to make mistakes. I am myself for prohibition, if it could be successfully enforced. But what has the Government done? The Government had made a trial in this direction. They wanted to prevent people from drinking and so they introduced prohibition, and attempted to provide all kinds of amenities and counter-attractions. What is the result? They have woefully failed in their attempts, and therefore they should honestly come out and say, “ We have made an attempt; but we have failed. It is a mistake to have introduced prohibition ”. If they correct their mistakes, it is prudence. But if they persist, then it is stupid. I would ask the Government to retrace their steps, if they think they had made a mistake. I do not blame them, because they are also human. But have they confessed that they have made a mistake? If they have, they are honest. Have they corrected it? Then they are prudent. Do they still persist in it? Then they are stupid. The Government have lost Rs. 20 crores annually by introducing prohibition. What is it that they have gained? Nothing. There is illicit distillation going on in almost every village. The other day, an hon. Member of the Legislature,

17th November 1949] [Dr. V. K. John]

speaking about prohibition, said that this prohibition has made even women and children drink. They make illicit arrack from bark, from rice from coconut and even from plantain and they drink it at home. This Government was advised by the Central Government to go slow in the matter of prohibition, but they would not hear anybody's advice. All of a sudden, they introduced prohibition all over the Province, without trying to know whether it would be successful. What is the result? It has been a thorough failure. I regret to say, Sir, the Government will never accept this fact or see their way to retrace their steps. Now what do they want us to do? "

MR. PRESIDENT :—" I think, the Hon. Leader of the Opposition is straying away. I see no connection between the failure of prohibition and the Maintenance of Public Order Bill, which is under discussion."

* DR. V. K. JOHN :—" Sir, I was developing my argument, that because of the failure of prohibition, it has given a handle to the Communists to carry on their propaganda in the villages. The Government first introduced this Draconian legislation in 1947. They said that it would be in force for one year only, and that within that time they would be able to counteract the subversive activities of the Communists. Now it is nearly three years since that Act has been in force, and still they say that the Communist menace is spreading and section after section of that Act has been reproduced; not only that, but they have added on clause 4-A. The one enemy which they find to-day exposing their irregularities and illegalities is the High Court of Madras. Since September 1948, about 300 cases of detenus were brought before the High Court and more than half that number has been released."

MR. PRESIDENT :—" The Hon. Leader of the Opposition has not answered my point. I want to know what is the connection between prohibition and the Public Order Bill."

* DR. V. K. JOHN :—" I am saying, Sir, that because the Government have failed to bring down prices, and are wasting money on their pet fads like prohibition, doing nothing to step up production, and because they have not reclaimed waste lands and made them fit for cultivation, they have given a handle to the Communists to make their propaganda in the villages, which has now necessitated their bringing forward this Public Order Bill. That is the connection, and that is the argument, Sir, that I was developing."

MR. PRESIDENT :—" I do not think that the Communists are the only people who criticise the Government. There are many others who speak against Government . . ."

* DR. V. K. JOHN :—" I am saying, Sir, that Communism, is not an inborn vice in our country. The people in the villages, as you know, Sir, are quite law-abiding and peaceful and will not engage themselves in subversive activities. Why should the

[Dr. V. K. John] [17th November 1949]

Communist go to these villages and make propaganda against the Government? First of all we should know the psychology of the people in the country at the present juncture."

MR. PRESIDENT :—" My point is this. If the Government make mistakes, it is not only the Communists, but also members of the Opposition speak against the Government and expose them in the public. There is no reason why Communism should spread on that account."

* DR. V. K. JOHN :—" Sir, my point is this. The Government have not done anything to step up production or to tackle the problem of employment and under-paid employment, nor have they taken any action to bring down prices of foodstuffs and other necessities of life. People whose stomachs are hungry and whose throats are thirsty are easily persuaded to accept any other form of Government, which might promise better things. What was the idea of this House in having passed this legislation for only one year? The Government made a provision in the Act of 1947 for collective fines. Did you have the desired effect? You come up now and say, 'we want to delete that provision, because we are not able to deal with the root cause by which Communism thrives. Let us delete the provision relating to collective fines, because it has not helped us to put down Communist activities'."

MR. PRESIDENT :—" I request the hon. Member to give the House the reasons why he wants to refer this Bill to the Select Committee. He has not so far stated why it should go to a Select Committee. He has been discussing only the general provisions of the Bill and attacking the Government for their deeds."

* DR. V. K. JOHN :—" As I understood your ruling, Sir, I thought that at this stage we can discuss the general provisions of the Bill also. No doubt, I made a motion that the Bill be referred to a Select Committee and I shall give my reasons for that presently in the course of my speech. Now I want to deal with certain general provisions of the Bill and in the course of my speech, I shall point out what are the defects in the Bill, what provisions require reconsideration and why is it necessary to take it before a Select Committee. I am going to point out how, instead of this Bill being an improvement on the previous Act, has gone back upon it, and how the public mind has been agitated over the several drastic provisions in this Bill and how there is not so much hurry to rush through this Bill now. That is how, Sir, I am going to develop my argument.

" Now, Sir, I was saying that the Government have passed that Draconian legislation in 1947 by their brute majority in both Houses of the legislature, although many members in both Houses pointed out the very many objectionable features in that Bill. What did the Government say at that time? They said that the Bill would be in force for only one year and by that time they would be able to put down the Communist activities. Had they any reservations in their minds, when they promised like that? Were they

17th November 1949] [Dr. V. K. John]

not thinking within themselves. 'Oh, this is all nonsense. This is simply an eye-wash. We will simply tell the House and people outside that this Bill will be in force for only one year, although we know that it will be extended from year to year.' If they wanted that it should be in force for only one year, what action had they taken to solve the problems which gave the Communists a fertile ground for their activities?

"Sir, let me now come to the Bill itself. What are the provisions of this Bill? You will find that it interferes with personal liberty of the individual. You can put any man in the jail; you can extern him; you can intern him; you can restrict his movements and his activities; you can also deal with his properties as you like; you can prevail upon his relations to give information; you can impose any kind of censorship on the press; you can impose collective fines, if necessary; you can control meetings and processions; you can impose restrictions on the kind of dress and uniforms which people could wear; in fact, Sir, you can do everything you like under the provisions of this Bill. The very liberty of the individual, and the security to his person and property are all involved in this Bill.

"The framers of the Bill in 1947 did not think that the High Court would interfere. If you look into the history of this legislation, you will find that the Government did not supply information to these detenues in 1947 or in the early half of 1948. Delayed information was given to about thousand men in jails by July 1948. About 300 persons moved the High Court in the matter. Every one, Sir, would have moved the High Court if they had the opportunity, the convenience and the assistance. It is not sixty-nine men who were released as the Hon. the Law Minister stated in the other House. Three hundred men moved the High Court. More than half of these people were released by the High Court. The High Court also passed strictures. The High Court said 'your grounds are vague; your grounds are insufficient, and there was delay in passing final orders'. Judges after Judges in the High Court have passed strictures on the way in which the liberties of the individual were dealt with by the Government. The Government wanted to take away the right of the individual for moving the High Court by *Habeas Corpus* applications. The High Court ruled 'you cannot do that'. I can understand the anxiety of the Government to protect the liberty of the individual. I am only on the side of the innocent man. Suppose, for argument's sake, an innocent man is arrested and detained, and he wants to move the High Court. What is the relief provided for him? The Hon. Minister has produced a charge-sheet against the Communists. I personally think that this charge-sheet is a mere waste of paper. The charge-sheet has been printed. They have not produced a charge-sheet against the innocents. Sir, you know the rule of law that even if 99 guilty persons escape, the one innocent man should not be convicted. This is a fundamental rule of law followed

12-30
p.m.

[Dr. V. K. John] [17th November 1949]

in this country for the last 150 years or from ancient times. Suppose, for argument's sake, the Government want an innocent man to be locked up. Let me state that the intentions of the Government may be good. I do not make an attack on the Police, because I know something of the way in which the Police are discharging their duties. I can say that under Indian Inspectors-General of Police, the Police have changed their outlook from one of authority to one of Service. They are doing a hard job. I do not make an attack upon them. They are not there to put persons in jail whom they know to be innocent. The Police are discharging their duties to the best of their ability. They are doing their utmost to protect the lives and property of innocent persons. But they are also human. They may make mistakes. The Government also may make mistakes. The Government have provided for the delegation of powers. They can delegate these powers to anybody. In the very nature of things, the Hon. Mr. Madhava Menon cannot himself look into all the cases. He has to delegate this power to his subordinates. Some Police Inspector or Head constable or an Assistant Superintendent of Police will make these arrests. I even concede that they honestly discharge their duties. We do not want subversive activities in this Province. But the Police are human and may commit mistakes. Suppose, they put an innocent man in jail and detain him; not out of spite but out of an error of judgment, or out of a mistake. What is the relief for the person detained? The High Court stated that the law provided that the Government must communicate to him the grounds and get his explanation therefor. No communication was sent to the detenus for months together. Persons have been detained. Communications that were sent were vague, and the grounds for detention were insufficient. The High Court stated that these detentions were wrong. I understand from the speech made by the Hon. the Law Minister that they have given strict instructions that there should not be any vague and insufficient grounds. All right; let us assume that the Government are quite good and the Ministers are anxious to protect the liberties of the individual. But still they will make mistakes. There it is my complaint comes. I say, Sir, there are two enemies to the freedom of the individual, the peace and prosperity of this Province; one the Communists and the other the Government. What have the Government done under this lawless law? When the High Court stated that there was irregularity and illegality in procedure, the Government should have asked the High Court to examine every one of the cases. They should have said 'we are very pleased that you have come to the rescue of the innocents whom we, out of mistake or out of an error of judgment or out of ignorance, have detained; we are very sorry for it.' The Government should have given compensation to those who have been set at liberty by the High Court. Sir, what is the brain wave behind this legislation? Government have no advisers or that they did not take their advice. Every time they

17th November 1949] [Dr. V. K. John]

passed an Ordinance, the High Court stated 'you have no jurisdiction to do that'. It may be that their advice is wrong or it may be that they did not accept the advice. But look at the brain wave behind this clause 4-A. Clause 4-A says—

'No order of detention made in respect of any person in pursuance of any of the foregoing provisions shall be deemed to be invalid or unlawful or improper on the ground of any defect, vagueness, insufficiency or delay in any communication made to such person under this Act.'

Sir, can any legislation go beyond this? I put this question to the Hon. Mr. Madhava Menon and to every Member of the Government to answer. If they want innocent persons should not suffer, why should they not give an opportunity to every man to have his case investigated by a Court of Law? I can understand that Government must have the power to arrest a man before he does any further injury. I concede that. Let the Government detain anybody. In detaining a man, they may detain an innocent man also. Let them extern a man or intern a man. That means he cannot thereafter indulge in subversive activities. You have successfully prevented him from indulging in subversive activities by detaining him immediately. You may detain him, extern him or intern him, or you may pass any order upon him. Let the Government have all these powers. The present situation requires those powers. But, after detention, why should not that man have an opportunity to move the courts of law? Sir, I am practising in the High Court of Madras. We must all be proud of the High Court. We have Judges who are not against the Government. They keep the balance even between the individual and the Government and between litigant and litigant. We must be proud of the High Court Judges. After all, the executive with a Legislature and the Judiciary must take the responsibility of carrying on the administration. Why should this executive Government be jealous and be suspicious of our Judges? The High Court release a man if he is innocent. Eminent Judges have stated that if they are wrong they would be glad if they are corrected in appeals. I know in one case Justice Coutes Trotter said that he was happy there would be an appeal to the Privy Council and if he committed a mistake he would be corrected. If I am a Judge, and if I made a mistake, and a review application is placed before me, I must be the first man to correct the mistake, I have made. Why should the Hon. Minister of the Government, who is ultimately responsible for locking the innocent person up, not place his case for review by impartial and eminent Judges of the High Court? Why prevent the innocent man from going to the Court after he has been detained? You have already prevented him from doing any harm. He may be guilty or he may be innocent. He may be a Communist or he may not be a Communist. To act immediately, the Government may not take an order from the Court. I quite see the Sub-Inspector of Police arresting a man as a Communist, although he is not actually a Communist, and then putting him in jail. But why prevent the man from moving the Court and telling the Court 'I am an innocent man: please protect my liberty'. The

[Dr. V. K. John] [17th November 1949]

Government on the other side must be in a position to say, 'well; this man is not an innocent man, we have proofs against him'. The other day, speaking on another Bill, the Hon. the Law Minister stated 'there will be delay in Courts'. But, I ask, Sir, how do the Government lose anything by delay? The man is already in jail, and he is prevented from doing any injury. Again the Hon. Minister stated that everything will become known to the public. Sir, he is an eminent lawyer who practised in the Courts. Does he not know that there is provision for trial *in camera*? In the *in camera* trial, the Government can place before the Judges their reasons. There are two things, namely, the liberty of the individual and the fear of the Government that something will be known to the public. Are not the people doing propaganda telling people something which the Government would not like to allow? Are they afraid of telling the public that 'this man has committed a wrong; this is the evidence against him'. On the other hand, the Government tried to take away the jurisdiction of the High Court. The High Court said 'no; you cannot do that'. Then they tried to exclude the jurisdiction of the High Court by Ordinances and other methods. The High Court stated 'no' to that also. Now, the Government have introduced this Clause 4-A in this Bill, i.e., no Court should question the insufficiency of the grounds or defect in the procedure. The Government want to arrest innocent men also and lock them up in jail. For security purposes, if Government must have this arbitrary power, are we, Members of the Legislature, to take the responsibility for this arbitrary power of locking up innocent men in jail without giving them an opportunity to go to the Court of Law—not before detention, but while they are in detention? What is the reason for this? What is the reason for excluding the jurisdiction of the Courts in Clause 16, and what is the reason for introducing Clause 4-A in this Bill? Are not the Government putting up a premium on vagueness, insufficiency, irregularity and illegality, committed by their subordinate officers? Is this to be the attitude of the Government, a popular Government, and a democratic Government by Ministers who are supposed to be responsible to the Legislature and who are ultimately responsible to the people of the country? I am only on the side of the innocent man. The Government say 'here are the subversive activities of these men, and we want to detain them'. Sir, I am solidly behind the Government in that respect. I even wish a Communist, who says that he is not a Communist and that he has not committed any crime, to be given the opportunity to go to Court to prove his case. Why should this Government distrust the Courts? The real reason is this. The Government, I regret to use the expression, are not honest in providing legislation for excluding the jurisdiction of the Court. The Government make that provision simply because they know they are making mistakes, and that they do not want those mistakes to be exposed. Is this the attitude of a popular Government? Are the Government setting an example for future Governments? Is there a piece of legislation in any other part of the world which is so

17th November 1949] [Dr. V. K. John]

Draconian in nature? Sir, there is the Martial Law. You are also a lawyer. Under the Martial Law anything can be done with the individuals in war time. But there is the Court to try the individual. It may be speedy or it may be summary trial. Still there is the Court to which an innocent man can go. Here we are delegating all the powers to subordinates. They say 'we will delegate our powers to somebody', but how are we to know that that somebody will exercise the powers properly? This enables them to arrest anybody; even spite may come in. Sir, they do not know the consequences of this legislation. Why rush with this Bill in the Lower House and in this House without going to a Select Committee, I ask? They have introduced many new provisions in this Bill which should have been examined and corrected by a Select Committee. Why do they fight shy of a Select Committee I want to know. Where is the hurry? The Ordinance is there already; we have had ten Ordinances during the last few days. This Government are living on controls and Ordinances; the Government are depending on them. Sir, whenever a Government comes forward with a Bill controlling the liberty of the individual and making his life and his person and property insecure, take it from me that it is a measure of the unpopularity of the Government. When the Britisher was here, as you know, Sir, they had the responsibility to carry on the Government of the country; they had not the popularity, they had not the confidence of the people; therefore they passed repressive laws, but they never ruled out the courts of law. Even the Press Law, they said, should go before three Judges; you can carry the matter before three Judges. But here, you can control the liberties of any individual without any relief whatsoever. Sir, this Government have passed many laws and this is the limit. This shows the extent to which they know they are unpopular. They have not got the confidence of the people and they are legislating for arbitrary powers, extraordinary arbitrary powers for the executive. Why? Because they know that without those powers they cannot manage; they have no influence in the country; the people have no confidence in them and therefore it is that communism grows. After making our nerves go panicky on account of the various atrocities committed by the Communists, the author of this charge-sheet against the Communists woke up and thought this was a very bad picture and said: there is still no cause for any alarm or panic, we shall take all these extraordinary powers. Therefore the position is this: the Government do not trust even this House; they do not like to have a Select Committee to go into this Bill even to assist them. They do not want any assistance. After all, what does a Select Committee do? Even there, the Government have a majority, they will always have such majority. The Select Committee will have the patience, the opportunity and the convenience to discuss calmly across the table all these provisions and come to some sort of understanding. The prestige of the Government will not be shaken by so sending this to a Select Committee and then making your own

12-45
p.m.

[Dr. V. K. John] [17th November 1949]

corrections, if necessary. But as I said, the Government want no assistance at all. The Government introduced legislation for prohibition. I asked the Government, apply prohibition to yourself; it is not prohibition from drink; you are drunk with power; and power without knowledge is a most dangerous thing. That is the position. And if only something is done by this Government to solve the economic ills of this Province, the economic ills of the rise in the cost of living, short supply of foodstuffs, black-markets, production and of unemployment and under-paid employment, then they will have done something. I ask the Ministers: get up early every morning and write down on a piece of paper 'talk less, do something' and always remember that nothing succeeds like success. Have they succeeded in tackling any of the problems which will solve the problem of the communists? Nothing at all; on the other hand, they plough the field for the Communists. They are strange associates, but one attacking the other; I say, Sir, the greater supporters of the Communists are the Government of this Province to-day. I say there are two enemies of the peace, and the prosperity of the Province and the freedom of the individual and those two enemies are, those who adopt subversive methods, who are engaged in loot and arson, and the Government of this Province who do nothing at all but plough the field for them, and create the conditions for the progress and prosperity of those subversive elements. This Bill ought not to have been brought at all. What the Government should have done and what any Government should have done is this: after passing that draconian Act in 1947, they should have said: let us delete clause after clause; let us repeal clause after clause; let us create conditions under which there will be no necessity for this Act. We asked for extraordinary powers, and you gave it; we asked for one year, but although it is now only six months or nine months, we do not want those powers any more; we wanted the powers only with a view to wean away our countrymen who have been persuaded by these Communists. Instead of saying that, you have had the Act for 1947 and 1948 during which you have committed so many mistakes, and now in 1949 you are here with another Bill, asking for larger powers for the Government and excluding the jurisdiction of the courts. Court is their bugbear; they want to circumvent the High Court of Madras, I do not know why. Because the High Court said they have some jurisdiction, let us circumvent the High Court. Let there be vagueness, let there be insufficiency, let there be illegality, let there be irregularity, let any innocent man be put into jail, but nobody should question the act done by us or by our subordinates—that is their view. They won't even ask a Select Committee to examine these provisions. If I were a member of such a Select Committee, I would have asked the Hon. Minister to say how many persons are Communists in this Province, how many of them are engaged in Communists activities, how many were engaged in 1947 and how many in 1948 and how many to-day. Sir, he did not give us any information on these points whatsoever: but he

17th November 1949] [Dr. V. K. John]

is asking us to pass this Draconian legislation. I say, Sir, this House should not take the responsibility of passing this legislation and that, without even referring this to a Select Committee. I move, Sir, that this Bill be referred to a Select Committee."

SRI B. BHIMA RAO :—" On a point of order, Mr. President, I want information from the Hon. President whether a measure which has been passed by the Assembly and has come here, may be referred to a Select Committee by this House."

MR. PRESIDENT :—" If the other House had referred the Bill to Select Committee this House cannot again do so; otherwise, this House can do so. May I know how many members are likely to take part in the discussion on this Bill? I should like to know, so that if necessary I may fix some time-limit."

DR. V. K. JOHN :—" Three of us from this side will speak, Sir."

SRI S. B. ADITYAN :—" Is the present discussion to be only on the question of referring the Bill to a Select Committee? "

MR. PRESIDENT :—" Even on the general provisions you may speak. But Mr. John's motion has not yet been seconded."

SRI B. NARAYANASWAMI NAYUDU :—" Mr. President, Sir, the question of the necessity for the Public Safety Bill has been debated in March 1947, and therefore I do not propose to deal with that question again now, however vexed it may be. So far as this Bill is concerned, it raises a further fundamental point with regard to the liberty of the subject and it has not been squarely faced by the Hon. Minister Mr. Madhava Menon. Is it the intention of the Legislature to arrest a person so soon as an order of the Government or an order of the District Magistrate is passed; and is there to be no challenging of that order in a court? That is the whole point on which this present Bill is centered. I request hon. Members on the other side to devote their personal attention to this. There are three ways in which all laws relating to personal liberty are to be dealt with. The ordinary way is for the Police to arrest a man, to charge-sheet him within fifteen days, then to let in evidence and go through other formalities and then comes the judgment; and if conviction is given, an appeal is provided for. That is the ordinary normal way. The Public Safety Act took away that right and substituted therefor another kind of enquiry; whether it was necessary or not, we are not concerned with it just now; but what has been done by the Public Safety Act is that for the normal method of arrest, charge-sheet, judgment, conviction, etc., section 3 of that Act was substituted. We have had the experience of the Act for some time now and various comments have been made on it by the High Court in 1948 and 1949 up to the end of July. An analysis of section 3 shows that first of all, you pass an order of detention. It must be communicated at once or forthwith to the Government; you have got to furnish the grounds,

[Sri B. Narayanaswami Nayudu] [17th November 1949]

circumstances and the urgency relating to the detention and the detenu is given the right to make representations on the grounds stated therein; then the Government have to refer it to the advisory council appointed by them; and this advisory council, although its decision is not binding, has got to sift the facts of the case and send up its opinion to the Government; then the Government pass an order which is final, without considering the question at all whether it is six months or ten months since the man has been first put into jail; and if the order is for his detention in jail for six months, that period is to be in addition to the period already undergone. What I want hon. Members of this House to consider is whether this procedure is going to be a mere farce; that is going to be the effect of clause 4-A in this Bill, that is the clause relating to substituted control for ordinary control. It says you need not go through all the details. It is clear that when an order is issued for imprisoning a person under clause 2, he is privy to or is a threat to public safety; not that he is to be imprisoned because he belongs to any particular group or has affiliations to particular organizations, or any such thing, but because of certain acts attributable to him; and so there has to be a complaint stating the facts constituting the danger to peace and all that. There is an elaborate judgment of Justice Viswanatha Sastri and Justice Satyanarayana Rao which says: 'The liberty of the subject is curtailed by courts established by law'—that is the ordinary law. The only safeguard provided by the Act is for the detenu to make a representation to the advisory council through the Provincial Government. That is all, no evidence. But you must give him the grounds; the advisory council should report upon it and the Government should pass the order. So, this is the procedure substituted for the ordinary procedure mentioned in the Criminal Procedure Code. The High Court's judgment goes on: 'In order to enable the detenu to present his case properly, he should know the grounds and the particulars of the grounds on the basis of which an order of detention is made under section 2 (1). The duty of providing this information was laid by the Act on the Provincial Government. The power conferred upon the Provincial Government of curtailing the liberty of the subject by the Act should, in my opinion, be exercised subject to the conditions and limitations imposed by the Act.' Is that correct? Is it the intention of this Legislature? Hence, the power given to the Government to detain a person should be exercised with limitations and the detenu must be furnished with the grounds of detention in order to enable him to make his representations and thereafter those representations must be referred to the Advisory Council. Once an order has been passed, its validity cannot be questioned. Understand it is not an order passed by merely the Government, but the power of issuing such an order is delegated to each District Magistrate and the Commissioner of Police. Therefore, we have got about 30 persons exercising control over the liberty of the subject. The Act of 1947 contains only a substitute clause for a trial under the ordinary law. Now, even if the object of the Act is not carried out, the order cannot be challenged by the High

17th November 1949] [Sri B. Narayanaswami Nayudu]

Court. Therefore, the main and plain question is whether this is the intention of the Hon. Minister. Squarely my friend has said that the Legislature have intended that this should not be challenged. Is it the intention of this Legislature? If so, the point may be made plain now."

MR. PRESIDENT :—" May I know from the Hon. Minister whether clause 4-A deals only with the defect, vagueness insufficiency or delay in the 'communication' of the grounds or whether it governs the sufficiency of the grounds also? "

THE HON. SRI K. MADHAVA MENON :—" The High Court itself has referred to the sufficiency of the reasons or grounds, Sir."

DR. V. K. JOHN :—" The Government like to keep everything in the Act, Sir."

SRI B. NARAYANASWAMI NAYUDU :—" Sir, let us assume there is an order detaining Narayanaswami Nayudu issued by the District Magistrate of Krishna and it has been communicated to him. Then what happens? First of all, what is this order given by the District Magistrate? This order states that I am a person trying to interfere with the public peace and tranquillity of this Province and therefore their interest is that I should be detained. On what ground is that order based? Upon the judgment of the District Magistrate that I am a person threatening public peace and tranquillity, and nothing more. The fact that I belong to the Justice Party or to the Communist Party or that I am a Muslim or a zamindar or a labourer, absolutely has no connexion at all. The Judges of the High Court simply listen to the evidence adduced. I am putting this question to the Judges in dealing with the *Habeas corpus* applications? What is the ground? It is said :

'The order is merely a routine order, mechanically passed or the mere outcome of police recommendations and not of a decision of the detaining authority [under section 2, clause (1)].'

Is it merely a mechanical order passed by the District Magistrate or by the Hon. Mr. Madhava Menon without applying his mind and judging it? There is the High Court. Has it got the power to go into the question or not? If the Hon. Mr. Madhava Menon or the District Magistrate passes an order, then the matter is finished. It may not be his order; he may simply sign. Does he want the High Court to see whether it is really actuated by the necessities of the case or not? No. The High Court cannot look into it. I am asking categorically and I hope the Hon. Minister will reply to it. Is it the intention of this Legislature that the High Court should not consider the question at all whether it was an order based merely on the police recommendations or whether the concerned authority had applied his mind to the facts of the case? As I already said, it is a terrible responsibility. And what is that responsibility? It is a responsibility of deciding whether the 'particular' person had been indulging in subversive activities

[Sri B. Narayanaswami Nayudu] [17th November 1949]

and committing various crimes like arson, looting, murder, etc., and whether he is likely to create mischief to the public peace. Therefore, in alleging a charge, it will be the personal responsibility of the executive. It is a personal responsibility given to Mr. Madhava Menon or the District Magistrate concerned which should be exercised after applying his own mind and not merely on the recommendation of the police. Is it the intention of the Hon. Minister that the High Court should be deprived of the jurisdiction of finding whether it is really a *bona fide* exercise of a personal responsibility or whether it is a mechanical order passed? I want an answer to this question.

“ Again, another observation made by the High Court is :

‘ The cyclostyle forms which incorporate all these three reasons found in the section are not even corrected before the orders are issued so as to indicate which of the three grounds apply to the particular case.’

Now, there are three grounds—has committed, about to commit, or is likely to commit. ‘ Likely to commit ’ is an intending act. This personal responsibility is a dreadful responsibility. This responsibility is delegated to the District Magistrate. What does he do? He simply signs the cyclostyle forms submitted to him. Do you want to justify these Subordinate Magistrates, the subordinate executive authority, that they can sign cyclostyle forms without even considering the case? Is it the intention of this Legislature? Does the Hon. Mr. Madhava Menon say ‘ Yes, they have got the right to sign cyclostyle forms without applying their minds and considering the case.’? If he says so, then he is perfectly competent and he can pass unscathed. If, on the other hand, he says that the District Magistrate has got to exercise his judgment with regard to the case, then, clause 4-A is nugatory. Therefore, it comes to this that the effect of clause 3 is nullified by reason of clause 4-A. I am putting this question because the Hon. Judges of the High Court have said these things.

“ I may ask another question. If an order is passed on mere suspicion of the commission of an offence, then the High Court says :

‘ If an order for detention is made, not in the interests of public safety or the maintenance of public order, but for the purpose of securing the detention in prison of a person who cannot be successfully prosecuted for an offence of which he is merely suspected, then it would be a *mala fide* exercise of the power. If a person who has been serving a sentence of imprisonment in jail for a pretty long period, say two years, is served on the day of his release with an order of detention under section 2 (1) (a), the order for detention is in effect an illegal extension of the term of his sentence of imprisonment and would be a *mala fide* exercise of the power.’

According to this observation, the person is in jail for two years; he has nothing to do with the political currency of the day or with public order and safety. At the end of two years he is released. Immediately he is served with an order of detention under section 2 (1) (a). Is it an order really and genuinely passed? I say ‘ No ’. The High Court has said that when the Legislature has passed a

17th November 1949] [Sri B. Narayanaswami Nayudu]

Bill, we can't help it. The Hon. Mr. Madhava Menon was referring to the Full Bench decision. Does the Full Bench decision say so? Then the High Court judgment goes on :

' If a person gets an order for his release on bail from a competent court, and just when he is actually released, an order of detention is made so as to nullify the order granting bail and for the purpose of confining him in jail during his trial for offences with which he is charged, it would be a *mala fide* exercise of the power conferred by Act I of 1947.'

Therefore, it should be seen whether the order is genuinely passed. In the instance pointed out by the High Court, it is a *mala fide* exercise of the power. That is what may be called ' fraud ' in the exercise of the power conferred on the executive authority.

" The High Court refers to another case :

' We have an instance of a man who was detained in jail for over three months under section 117 of the Code of Criminal Procedure for refusing to execute an interim security bond. Instead of pursuing the proceedings initiated against him under section 107 of the Code of Criminal Procedure and giving him an opportunity to substantiate his defence under section 118 of the Code, the Police dropped those proceedings and moved the District Magistrate for an order under section 2 (1) (a) of Act I of 1947.'

Hon. Members will please notice the grounds stated in the detention order. It is not a question of vagueness, sufficiency or insufficiency. Does it disclose the allegations?

' The order of detention was passed on the ground that because the applicant (who stoutly protested his innocence all along) refused to execute an interim bond for keeping the peace he was likely to act in a manner prejudicial to public safety.'

Do you call it a right order? Do you say that a man should not have a right to agitate against his imprisonment? Taking the facts on the face, here is an order purporting to be an order to preserve public peace and tranquillity but certainly it has nothing to do with it because the man refuses only to execute a bond. He is forthwith detained. In regard to this, the High Court's judgment goes on :

' His refusal to execute an interim bond did not mean or even imply that he was acting or was about to act or is likely to act in a manner prejudicial to public safety or the maintenance of public order and an order for his detention passed under section 2 (1) (a) of Act I of 1947 based on a refusal of the applicant to execute an interim security bond would be a *mala fide* exercise of the power.'

The whole question plumbs upon this. The right to arrest is given only for a restricted purpose and not to suit the ' whims and fancies ' of the executive authority. The right to arrest is only for the maintenance of public safety.

" Another observation is this :

' It is a distressing feature of some of the cases that have come under our notice and a circumstance that had caused us considerable uneasiness,

Of course, it is no distress or uneasiness to the Government or the Hon. Mr. Madhava Menon,

' that the applicants have been in jail for periods ranging from four months to one year pursuant to an initial order of detention without final orders having been passed by the Provincial Government.'

[Sri B. Narayanaswami Nayudu] [17th November 1949]

Hon. Members would like to know what this means. There is an order under clause 2 (1) (a), but the final order confirming, modifying or cancelling under clause 3 (5), the previous order does not come for months and even years. In such cases, the High Court says—

‘In other words, the applicants have had to endure imprisonment for a much longer period than the period of six months they would have to undergo, even if the initial order for detention had been confirmed by the Provincial Government under section 3 (5).’

I ask in all sincerity the members sitting on the other side, ‘Do you want to support orders of this kind?’ My Friend here says it is the intention of the Legislature to see that these things are not done in a ‘proper’ law. ‘Do you want that in detaining a person, the time between the issue of the initial order and the final order may take more than a year and still it should not be questioned by the High Court?’

1-15
P.m.

“You should give definitely the grounds for the detention. Are you going to detain a person merely on grounds of religious, political or economic beliefs? Is the Magistrate going to write down an order and say that ‘So and so belongs to the Communist Party, he is a Muslim, he belongs to the Justice Party, he is a labourer, he is a zamindar. Therefore he shall be arrested and put in prison’. Do you mean to say that there is going to be mentioned in the order only this much and nothing more? If the High Court points out this and sets aside an order of detention, is the Hon. Mr. Madhava Menon going to say that it is wrong? Their Lordships have observed—

‘Similarly, if a person is detained merely on the ground of his religious, political or economic beliefs and opinions or because he is addicted to some personal vice, without anything relating to the maintenance of public safety or order appearing from the grounds, then also the detention would be held to be bad for the same reasons. Even if a person had been convicted of an offence involving a breach of the public peace, still if the event happened in the remote past and the satisfaction of the detaining authority does not relate to conduct persisted in after the coming into force of Act I of 1947, the detention would be bad.’

“Their Lordships have further stated—

‘Membership of a party or association which has not been declared an illegal body is prominently mentioned in the grounds communicated to the detenus in some of these cases without any allegation of any acts or facts suggesting that the detenus in question, apart from the party in general, were themselves acting or about to act in a manner prejudicial to public safety or maintenance of public order. In such cases the satisfaction of the detaining authority is not a satisfaction about matters relevant to or falling within section 2 so far as the particular individuals are concerned and that is not a satisfaction which is immune from scrutiny in this Court when the legality of the detention is impugned.’

“So, you should prove that the detenu, apart from the fact that he belongs to a particular party, is likely to act or is acting in a manner prejudicial to public safety. It is very wrong to simply imprison anybody without proving this. Is it your intention to simply mention the membership in a particular party and imprison anybody without giving any reasons? Does the Hon. Minister for Law want the legislators who are sitting here to think likewise?

17th November 1949] [Sri B. Narayanaswami Nayudu]

Does he want that the High Courts should not interfere even in such cases? Certainly, it is not the intention of the legislators that simply because a particular man is a Muslim or is a communist or anything, he should be arrested and put in prison. This matter is of such great importance and I would like to have the indulgence of the President for a few more minutes, as I want to say a few more words."

MR. PRESIDENT:—"I have not curtailed the speeches of the hon. Member so far. I am not sure of the future. As I thought that the members opposite should have their full say in the matter, I have been allowing them the time that they required. But, I would like to fix some time-limit for others."

SRI M. NARAYANA MENON:—"Members on this side of the House would also like to say something."

MR. PRESIDENT:—"I do not know if you have any reason to speak at all." (Laughter.)

SRI B. BHIMA RAO:—"I would like to offer a few suggestions for removing certain hardships and grievances of the detenues."

SRI B. NARAYANASWAMI NAYUDU:—"In one of the applications Their Lordships held—

'In the present application, excluding the activities in 1946 and before August 1947, when the applicant was released from detention, the only ground communicated to him, would not, in my opinion, convey any information, nor does it refer to any activities on his part showing that he is acting in a manner prejudicial to the public safety and its maintenance. The Communist Party was not declared illegal, in which case, it will be open to the Government to take action under section 17 of the Criminal Law Amendment Act, if the person continued thereafter to associate himself with that party. Even if a party is declared illegal, the mere association with that party would not justify the inference that the person was acting in a manner prejudicial to public safety. We are not concerned with the objects of a particular political party, nor are we prepared to accept the argument advanced on behalf of the applicants that the proceedings under the Act are actuated by political animosity, and that therefore they are mala fide. We are concerned only with the question whether the grounds communicated are definite and are such as would enable the applicant to present his case properly to the Provincial Government. To take a sample of the grounds communicated to the present applicant, one of the grounds stated that the applicant ridiculed the proposals of the Government to award compensation to the zamindars and inamdars; that he was also actively engaged in the Municipal election propaganda to get Communist candidates elected. These grounds besides being vague, are in our opinion, entirely outside the purview of the Act.'

"Sir, it is very necessary that the Government must give a man who is detained the reasons for which he is detained. Tell him, 'We have got information that you have taken part in such and such activities and it is dangerous to have you outside and you should be put in prison' or something like that. But you do not say anything like that. You say to the legislators that they are not to question the order of detention. Do you want the legislators to agree with you when you are authorizing the District Magistrates just to arrest anybody even for such things as ridiculing

[Sri B. Narayanaswami Nayudu] [17th November 1949]

the proposals of the Government to award compensation to zamindars and inamdars and taking part in an election propaganda? It is really most unfair and unjust. Do you say that even in such cases, even though the grounds are insufficient, the High Courts should not interfere? As evident, these are really very vague grounds and according to clause 4-A, the Government have taken wide powers and nobody can question their action. What is it that you are asking your District Magistrates to do? Do you want them to arrest a man and put him in jail if he is committing or about to commit an act which is prejudicial to public safety, or do you want a man to be arrested according to the whims and fancies of the District Magistrate concerned? This is a very fundamental question which has to be answered by the Hon. Minister.

“ Then there is this clause 4-A which says that no order shall be declared illegal if there was any delay in the communication. Do you think that it is proper to detain a man without considerable evidence and without communicating to him the grounds for his detention for periods ranging from four to five months. I can understand free thinking in this matter. There is the ordinary law for dealing with such criminal acts. Secondly, you can arrest a man only on a limited ground, viz., that he works himself to the extent of causing breach of peace and other acts which are prejudicial to public safety. Thirdly, there is the Gestapo course by which you can say, ‘ Never mind. We have got powers under section 2 (1) (a). We will do what we think right. Nobody can question us. The whole thing is finished. Our respect for the highest authority in the land, namely, the High Court is that they must endorse our views ’. Experience has shown during the 1½ years of the working of this Act that there were certain defects in the Act and that the grounds should be definitely stated in the order of detention in order to do justice. Is it your intention that justice should not be taken into account and that the High Courts should only be, what may be called, ‘ Star Chambers ’, to carry out the executive functions of the Government? In all humility, I ask whether this is proper? This is not a simple matter. You are taking away the fundamental liberties. If you want to take very wide powers, then why not say, ‘ We do not want section 3 and once an order is passed, it is finished. Nobody can question us ’. The public say that this is not an honest way of exercising power. What they want is a very ingenious way and not a fraudulent way of exercising the power. I would like to point out here the High Court judgment—

‘ Where there is a limited statutory power of interference with the liberty of a person, the power must be exercised bona fide for the end specified in the Statute. Otherwise, it will constitute a fraudulent exercise of the power and an order based on such a fraudulent exercise of power would be bad The fraud or mala fides consists in exercising the power for purposes foreign to those prescribed by the Statute.’

Is it not a fraudulent way if you take such wide powers under this clause? Yet you say, ‘ We shall give you notice and you will be heard ’ and all that. You are trying to camouflage the whole

17th November 1949] [Sri B. Narayanaswami Nayudu]

issue by language. If you want to take such wide powers, tell so openly and with courage. I therefore submit that there is no need even for a Select Committee. I shall never be a party to a legislation of this type. I request the hon. Members in all sincerity to bestow their mind on this very important question."

MR. PRESIDENT :—" I now adjourn the House to meet again at 2-30 p.m."

(After lunch—2-30 p.m.)

* SRI B. BHIMA RAO :—" Mr. President, I was mentioning that the judgment of the Federal Court in the Bihar case known as *Jayachandra vs. The Province of Bihar* was pronounced on the 28th May 1949, and that it was published in all the papers in the country. The effect of that decision was that the extension of life of an Act by means of a notification was invalid. That being so, there need not have been any doubt entertained about the extensions which had been resorted to by many Provincial Governments. Hence I am only trying to suggest a procedure for future guidance in a very friendly spirit.

" Sir, I feel, that instead of proroguing the Legislature on the 2nd August 1949, if only we had been summoned to attend the Council, we would have been here the next day at our respective posts of duty. Sir, the judgment I have just referred to has mentioned the way in which expiring Acts should be revalidated. I do not want to deal with the judgment *in extenso* but shall repeat only the Chief Justice's remarks. He has said that the only apt manner of reviving an expired Act is by enacting a fresh Statute expressly providing that 'that Act is hereafter revived'. So, if only we had mentioned that those four Acts contained in Ordinance number, I were revived from the dates on which they expired as per the decision of the Federal Court, I think there would not have been any necessity to issue ten Ordinances within three months. Sir, I am mentioning all this only in a friendly spirit of criticism because these Ordinances are rather repugnant to public opinion. I would refer to what happened in 1939 on a similar occasion. Mr. President, you were not a member of the House then, in August 1939. But my Hon. Friend, the Law Minister was. We have been together since 1st April 1937, that is for the last 12 years or more. When the Temple Entry question was decided, an Ordinance was issued relating to Temple Entry in Madura. That was the solitary Ordinance that was issued during the first Congress Government. Even then, a huge protest was lodged against it by the late Rt. Hon. V. S. Srinivasa Sastriar, who made a memorable speech on the occasion and that speech is still ringing in my ears. A few months later . . ."

THE HON. SRI K. MADHAVA MENON :—" Mr. Srinivasa Sastriar did not oppose it. He said that the Government were perfectly right."

[17th November 1949]

MR. PRESIDENT :—" The hon. Member never said anything like that. He only recalled the memorable speech Mr. Sasriar made on that occasion."

* SRI B. BHIMA RAO :—" He definitely said we ought not to have resorted to Ordinances. You may get the volumes and verify. When it was explained to him that both the President and the Deputy President were in Simla on that occasion and hence the Government could not call for a meeting of the Legislature and therefore the Ordinance was issued, he proceeded with the merits of the legislation. Let me now quote what the Father of the Nation has said about Ordinances. I shall read page 70 of the book entitled *Delhi Diary* which contains his post-prayer speeches. It says :

' Many people came and talked to him and left literature with him to the effect that the popular Ministers were acting in an autocratic fashion like their British predecessors. He had not talked to the Ministers in this connexion. But he was quite clear that nothing for which they had criticised the British Government should happen in the regime of responsible ministries. Under the British rule the Viceroy could issue Ordinances for making laws and executing them. There was a hue and cry against the combination of judicial and executive functions. Nothing had happened since to warrant a change in the opinion. There should be no Ordinance rule. Their legislative assemblies should be their only law-makers. Ministers were liable to be changed at will. Their acts should be subject to review by their courts. They should do all in their power to make justice cheap, expeditious and incorruptible. For that purpose *Panchayat Raj* had been suggested. It was not possible for a High Court to reach lakhs and lakhs of people. Only extraordinary situations required emergency legislation. Legislative assemblies, even though the procedure might entail some delay, must not be superseded by the executive. He had no concrete example in mind. He had based his remarks upon the correspondence he had received from various provinces. Therefore, while he appealed to the people not to take the law into their own hands, he appealed to the Ministers to beware of lapsing into the old ways which they had condemned.'

Sir, that is why, seeing that these Ordinances are repugnant to public opinion I am making these suggestions. One thing I find, Sir, in the procedure adopted in England and it is worthwhile copying it here also. In every session of the Parliament in England, it is the practice to note down those legislations which are expiring and putting them into a Bill called the 'Expiring Acts Reviving Bill'"

MR. PRESIDENT :—" But here they were under the impression that they could do it by a notification."

SRI B. BHIMA RAO :—" I would like to suggest that the Legislature Secretariat should maintain some kind of a diary or an index showing the date on which a certain legislation lapses, as it would not be possible for the Hon. Ministers to attend to these details. This will enable the Government to codify all lapsing Acts and bring in a reviving legislation. Sir, for instance, in 1948 several Acts passed during the Advisers' regime expired and Government brought in a consolidated Bill to revive those Acts. We sat here and passed them although with certain modifications. Sir, you also gave a ruling then that such a procedure was quite valid. So, I would commend this suggestion to the Government for their early consideration"

17th November 1949]

THE HON. SRI K. MADHAVA MENON :—" We have such a procedure now, Sir."

* SRI B. BHIMA RAO :—" Sir, now I would like to deal with the rigours of the Bill. I said even yesterday that more Regional Advisory Committees should be appointed. I feel the necessity for such Committees."

MR. PRESIDENT :—" Does clause 3 restrict the number of Advisory Councils? Does it contemplate only one council? "

THE HON. SRI K. MADHAVA MENON :—" Formerly, Sir, it was only one committee that was contemplated. But, now there is provision for one or more councils."

* SRI B. BHIMA RAO :—" I am making this request in order to remove the difficulties and grievances of detenus undergoing detention for six months and more. I shall now mention a concrete instance in which a detenu has suffered due to delay on the part of the Government. A certain gentleman was travelling with me on the 30th April 1948 from Madras to Bellary and he was to go to a place called Rayadurg. He detained with me the next day. But I was surprised to find in the newspapers the day after that he was arrested and detained in the Central Jail to be taken to the Vellore Jail later. He was styling himself as a communist, in his talks with me in the train. At that time I was reading a book called *Red Conquest of the World* which was taken from our Library previously and which defines the essentials of a communist. I went to him in the jail a few days later and in the course of my conversation, put him certain questions. I asked him 'do you want to adopt violent means to achieve your ends', and he said 'no'. I asked him if he wanted to turn out Pandit Nehru's Government and he replied 'no'. I also put some other questions from that book."

MR. PRESIDENT :—" But when you put him those questions, he was in the jail! "

* SRI B. BHIMA RAO :—" He gave it in writing that he would have nothing to do with the communist movement and he signed the paper in my presence. Sir, I wanted to send that communication to the then Minister for Prisons, Dr. T. S. S. Rajan, but the Jail Superintendent objected to it saying that he must send it to the Inspector-General of Prisons first and then to the Chief Secretary to Government. So, Sir, that paper which was signed on the 1st May 1948 took some months to reach the Government as will be evident from the fact that he was released on the 9th October 1948, that is after a lapse of five months and more."

MR. PRESIDENT :—" It took two years for us to be released! "

[17th November 1949]

* SRI B. BHIMA RAO :—“ That was during the Advisers’ regime, Sir. But now we are under a popular Government and such a thing ought to have been attended to with utmost expedition.”

MR. PRESIDENT :—“ I was charged for having done a thing on a particular day in Chittoor while I was actually in jail on that day! ”

* DR. V. K. JOHN :—“ I hope the present Government would not do like things.”

MR. PRESIDENT :—“ I am sure, they will not.”

* SRI B. BHIMA RAO :—“ A similar incident in my own case also, Sir, during the Non-Co-operation Movement in 1922. It is only to avoid delays running in many cases to six months and more that I suggest the constitution of more advisory councils. In my district, there are many retired Judges and Sub-Judges. Let there be, say, five or six regional advisory councils instead of two and let the councils meet twice a month. That will be enough to dispose of all cases. This is my humble submission, Sir, made with a genuine intention of removing the hardship and rigours the detenus are put to. Executive officers when they commit an act, they want to stick to it. They don’t want to revise their opinion. But there are some honourable exceptions. During the Advisers’ regime, there was one fine Collector in our district in 1942–43. As my friends complained, he used to affix his signature to each and every warrant given to him by the Police. He sent 70 people to Vellore and out of the six or seven hundred detenus in the Vellore Jail from the whole province, ten per cent hailed from Bellary. Some of the detenus were boys and they were weeping in the morning and there was nobody to attend to them. When I went to him and represented matters, he promised to look into the matter at the end of 15 days. He was quite correct in his word. In the case of 58 people, he recommended immediate release and in regard to 12 the gentleman was satisfied that they must be detained. These 58 were released. It is very difficult to get such fine officers and that is why I say, in order to remove hardships, under clause (4) as now introduced, it is absolutely necessary that my hon. Friend should take courage in both hands and appoint more advisory councils to dispose of these cases expeditiously. In a way, they will supersede the functions of the High Court. It cannot be helped. With these few words and suggestions, I accept the principles of this Bill.”

* SRI R. SURYANARAYANA RAO :—“ Mr. President, Sir, the Hon. Minister for Law is not so wedded to this piece of legislation which he has brought forward that he would charge all those who oppose it, of sabotage. Sir, as the hon. the Leader of the Opposition assured, we are as much interested, perhaps more interested, in the maintenance of law and order. But, Sir, when the Government try to do things in an arbitrary manner, taking advantage of the large majority they possess in both the Houses,

17th November 1949] [Sri R. Suryanarayana Rao]

and allow and make these legislatures swallow pieces of legislations which are opposed to all canons of jurisprudence, we have every right to tell them that they are in the wrong, that they are in no way better than the previous governments which put them into prison. They have become, Sir, hardened perhaps as you said, being too long in detention in jail."

MR. PRESIDENT :—" I am glad you did not say hardened criminals."

* SRI R. SURYANARAYANA RAO :—" I did not say so, Sir. Nor do I consider those who are put into prison under this law as criminals. They may be people with different ideology from my own but still, Sir, I do not think I shall be justified in dubbing them as criminals unless they have indulged in criminal acts. Sir, even if the Hon. Minister considers us guilty of sabotage, we are in the honourable company of the honourable judges of the High Court. The judgments, extracts from which were read by my hon. Friend Mr. Narayanaswami Naidu this morning as also the recent judgments of the High Court in respect of these two sections over which this House has been spending so much time are in our favour and, therefore, Sir, we are in good company and we are not ashamed to oppose these two clauses.

" Sir, in the year 1947, when this Bill was introduced by Sri T. Prakasam, we did oppose many of the provisions of the Bill. At that time, Sir, we forced a division on many points, though we were defeated. But an assurance was given, Sir, that the Act will be in force only for a period of one year and if any extension is to be made, it will be by notification and in the aggregate not exceeding one year. But, Sir, from 1947 we have come to 1949 and the Hon. Minister for Law wants it to be extended to 1952. That too, Sir, the original Act of 1947, consisted of 19 sections, the present Bill, Sir, let us not be misled though it says it has got only 21 clauses, I think it practically contains 33 clauses. There is 4-A, B, 7-A, B and so on. I say this, Sir, to show that so many other items have been brought under the provisions of this law which makes it much more objectionable than the Act of 1947.

" The Hon. Minister for Law has persuaded the other House not to refer the Bill to a Select Committee. But we in this House feel that a great and grave injustice is being done to the public of this Province. When we are enacting a Bill consisting of 33 clauses and creating offences and giving more power under this Bill, it is but proper that it should be properly scrutinized by a select committee. Sir, we know the fate of this Bill. Its fate is, it will be passed. We consider it a fate or a *fait accompli*. Let the Bill be scrutinized properly by people who can give their time and attention and see what the lacunae were which were pointed out by the High Court; to what extent this lacuna should be supplied and to what extent the Government will be justified in ousting the jurisdiction of the courts.

[Sri R. Suryanarayana Rao] [17th November 1949]

“ The trouble to combat which this Bill has been introduced is as we have been reading in newspapers confined to a few areas. But the provisions of the Bill, Sir, are applicable to all areas. If the Act said ‘ the provisions of this Bill shall be extended to such areas as the Government deem fit by notification ’ I would have understood it, Sir. But this Bill is to come into force and become applicable to the whole Province of Madras. I take it, Sir, that the Government are taking upon themselves too much of power and responsibility and I think they are not justified. It is regrettable that Members of Government who are eminent lawyers should think of ousting the jurisdiction of the courts which is the only safety to the individual liberty. I am sure, Sir, if the Hon. Minister had been on this side of the House, he would have protested perhaps much more vigorously than we, laymen, on this side are doing. They go on issuing ordinances as the High Court finds fault with their orders. It is unfair to the highest court of justice, Sir. I am glad the hon. Judges of the High Court were not perturbed by the attitude of the Government. They went on giving decisions and interpretations as they felt best, on the provisions of the Act. It looked as though the Government were threatening the High Court. ‘ If you find fault with us in this matter we will pass an ordinance. ’ One was passed. Another set of Judges of the High Court gave another decision. They said ‘ All right, we will oust your jurisdiction. ’ It is not fair either to themselves or to the High Court. I do not understand, Sir, how Members of the Treasury Benches could gulp down a legislation of this kind. The fact of the matter is nobody goes into detail in these legislative measures that come before the House. It is simply hustled through and if anybody raises any objection, Sir, as I have already said, we are found to be guilty of sabotage. All those hon. Members who have spoken against the Bill may get into the bad books of the Police to-morrow. That was so in the past and that is going to be so when the Bill becomes law, because they will be marked persons. And what is the provision, Sir, we complained against last time in 1947 when this Bill came? You are giving authority to minions of the law to take law into their own hands and arrest persons and put persons under detention. Then if the order is to be revised at all, it is to be done by the Government because the detenu has no recourse to a Court of Law. Sir, This is very unfair. Always, Sir, when an order is passed, the executive authority, the highest executive authority stands by that order. If a Policeman does something, the Inspector-General of Police will stand by him. That is the tradition of services. I do not blame them. But what is the remedy for the citizen who is affected. The courts of law are the only remedy and you are taking away the jurisdiction of the courts of law. I do not know, Sir, how my hon. Friend, the Minister for Law, put his signature to this. It is impossible to think any lawyer could acquiesce in that clause 4 and clause 4-A into which we will go later, Sir, insufficiency, vagueness, and all defects, which flaw in law enable a person to seek

17th November 1949] [Sri R. Suryanarayana Rao]

redress, are ratified. Sir, it is not fair. I do not think we on this side of this House will be a party to this Bill. If they pass it and enforce it even against us, it does not matter.

" We are glad, Sir, that the highest court in our province is standing up to the highest tradition and dispensing law as it should irrespective of the frowns of the Government. The Government are to-day enacting a law after promulgating an ordinance to counteract the judgments of the High Court. It is not fair, Sir. You must respect the courts of the land. It is not fair to the Hon. Judges of the High Court, men of honesty and integrity, who are discharging their duties. You are telling them that you are going to teach a lesson for the decisions and interpretations they give. Supposing all the High Court Judges said, the grounds on which detention is made are correct, they would have been good boys for this Government. That is one of the things why no Judge of the High Court should owe his appointment to the Treasury Bench. That was what we once said when there was discussion on the Indian Constitution. We said it should not be left to the Government to recommend the appointment of High Court Judges, because it places them in an awkward position. It has been so in the past and will be so in the future. How long are our friends on the Treasury Bench going to carry on, in the old bureaucratic way? There is no change in their attitude towards personal liberty which they value most. Sir, you were telling us that you were accused of an offence when you were in jail as though you had committed it actually, when you were outside. This is just like what my hon. Friend, Mr. Narayana-swami Nayudu quoted this morning. A young man was put in jail for two years. He was subsequently released. Immediately on his release, he was served with an order of arrest for an offence or an offence supposed to have been committed by him two years ago. He has been in jail under restraint. Should he not be given some time to see whether these two years' incarceration had effected some reformation in him? Immediately he comes out of the jail, an order is served on him and he is arrested. The order is waiting for him and the Policemen are ready. This is no better than the old bureaucratic method. I do not know with what face Members on the Treasury Bench can go to the country and say, 'We are for freedom of speech, freedom of action and freedom of everything' because every act of theirs is contrary to their professions. To crown all this, they want the imprimatur of the legislature for these lawless laws. I do not think any self-respecting member of any legislature will give his imprimatur to this lawless law whereby the jurisdiction of the courts is taken away and the sacred liberty of the person is infringed. I think, Sir, this House should be enabled to go into the matter and soften the rigours of the law. But if the Government have made up their mind to stand by clause 4-A, there is no use of referring the Bill to a select committee. If they are reasonable enough to understand the feelings of the country, not our feelings alone, and are in a mood to recast

3 p.m.

[Sri R. Suryanarayana Rao]

[17th November 1949]

the provisions, we wish that this Bill is referred to a select committee. If not, Sir, let the steam roller roll on and let everything go on as they wish.

“ Sir, since 1947, no attempt has been made to remove the causes which led to the enactment of the Public Safety Act of 1947. From what is happening in the country, it looks as if the situation is becoming worse and worse every day, even according to the Government. Have the Government looked into the causes of this? How is it that we are losing our hold on the people? What is it that makes the people listen to the cries of the Communists or people who are intent on creating disorder? Have the Government examined that aspect of it? I may tell the Government, Sir, that the more such laws are passed, as the British Government passed the Rowlett Act, the more difficult will it be for the Government to restrain the bad influences that are at work. The same warning that was given to the British Government at the time of the Rowlett Act, I have to give the Treasury Bench to-day. This is not the method of dealing with discontent in the country.”

DR. A. LAKSHMANASWAMI MUDALIYAR :—“ Mr. President, I do not think there is anybody in this House or outside this House who does not share the view that lawlessness should be put down and that there should be no encouragement given to people who defy law in one shape or other. If, therefore, hon. Members feel that, in spite of the faith that is in them, they should be supporters of law, they cannot help expressing views of a contrary nature in regard to the legislation that is now proposed to be enacted, it is because they feel that on occasions the very laws that they may pass may be promoters of more lawlessness in the country. Mr. Suryanarayana Rao, at the conclusion of his speech, gave an illustration of the Rowlett Act. So long as a foreign Government was in power, it did not matter to us and we had only to speak of the necessity of preserving the elementary human rights and let them face the music. But to-day, it is a question of addressing our own countrymen. What is the best manner in which we can put down lawlessness in the country? At the same time, I wish the House to take a comprehensive view of the matter and not merely pass legislation of this nature but also concert necessary measures to put down the spirit of lawlessness as soon as possible. There may be historical grounds for the spirit of lawlessness prevailing to-day. It may be that a section of the people are under the impression that because their own countrymen are in power, they may do what they like and defy laws. On the other hand, it should be duty of all of us and of the Government in particular to weed out unhealthy influence from society, and so create a state of mind in the public that they will be the fullest supporters of any legislation that the Government may propose in that respect.

“ Sir, it has been well said that a second-rate law generally obeyed and implicitly believed in by the public is much better than

17th November 1949] [Dr. A. Lakshmanaswami Mudaliyar]

a first rate law which will be disobeyed and in which the public have no faith and have very great doubts as to its efficacy. One of the fundamental objections that have been taken against this Bill is for the introduction of clause 4-A, which is so much in violation of all human rights. It is time that the Government should reconsider their attitude even at this late stage. If clause 4-A is adopted by the House as it stands to-day, there will be no method of giving relief to a large number of innocent people who may, with the best of motives or with the worst of motives, find themselves in the clutches of the law. Sub-clause (2) of clause 2-A says :

‘ (2) In sub-section (1), the word ‘harbours’ includes the supplying with a view to evade apprehension a person with food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this sub-section or not, to evade apprehension.’

On the face of it, a person who actually connives at the evasion of apprehension of a person who is criminally responsible should not be lightly let off. On the other hand, what will be the effect of this particular clause? Sub-clause (3) says :

‘ (3) Sub-section (1) does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.’ Suppose a son goes to his father and says, ‘I have got to go urgently. Will you give me five rupees?’ The father is not aware of the fact, but later on his son is found to be a person who broke the law. It is the unfortunate experience of some fathers that their sons do not communicate with them before breaking the law. The fathers do not know whether the law had been broken or not. Would that father not come within the clutches of the particular clause? If he does come within the clutches of the particular clause, clause 4-A will prevent his getting any redress whatsoever. (Interruption by Hon. Sri K. Madhava Menon.) But there is no method of avoiding or appealing against the punishment. That is my point. I know some unfortunate cases where this has come into vogue. The parent has unfortunately no knowledge of the vagaries of the son. It is an unfortunate state of affairs, but still it is there.

“ Secondly, Sir, it has been suggested that mere matters of routine which are not strictly complied with should not be taken as grounds on which the particular punishment of detention may be set aside. Sir, a large number of persons have been invested by the Government with these powers to be exercised in the manner in which they deem to be best. These persons are frequently transferred and others are posted to their places. It is not altogether the fault of the individual concerned if he does not know exactly how to apply the law and if he does not fully comprehend all the provisions of the law. District Collectors are being transferred and new men are being posted and a multiplicity of duties are entrusted to them. Therefore it should not be surprising if a Collector here or a Collector there, even with the best of intentions, does not exactly comprehend the full implications the Hon. the Law Minister may have in his mind in framing such a legislation. It is for this reason that recourse is always had to another machinery which will be uninfluenced by all these factors and which will, in a dispassionate and cool manner, try to come to certain definite conclusions which

[Dr. A. Lakshmanaswami Mudaliyar] [17th November 1949]

will appeal to the public at large. Sir, it is the duty of the Government to see that whatever legislation they try to implement, they carry with them the bulk of the people. The greatest safeguard for any Government is public opinion as manifested by the views of the bulk of the people. If the bulk of the people come to the conclusion, on account of the fact that the law has not been as well enforced as it ought to be or that the provisions of the law have not been applied in the humanitarian manner in which they ought to be applied, if they come to the conclusion that there is something radically wrong in the provisions of the law, you defeat your very purpose in enacting the law. No law can be enforced merely by those who are in charge of law and order. It is the public that should be behind the enforcement of such law and order. It is from that point of view that I feel very strongly that a provision which deprives the highest judiciary of the land of any opportunity of expressing its opinion and giving relief where it may be necessary to give relief, is a provision which is quite contrary to the spirit in which the rights of humanity have been framed.

“ I notice, Sir, that the Government propose in sub-clause 7 (1) of the Bill the following :—

‘ 7. (1) The Provincial Government may, in the interests of public security or maintenance of public order, by order, prohibit or impose such conditions as may be necessary on the holding of camps or performance of drill or parade with or without arms, or any article, weapon or implement capable of being used as arms by any class of persons or organizations whose activities are in the opinion of the Provincial Government subversive of law and order.’

Then it is said in sub-clause (2) :—

‘ (2) Any contravention of an order made under this section shall be punishable with imprisonment, for a term which may extend to one year, or with fine, or with both.’

It is not quite clear who will be considered as a person who contravenes this particular order. Unfortunately there are organizations some of them of an All-India character where this sort of drills, camps and parades with arms or sticks are in vogue. It is unfortunate, but I want this fact to be taken note of. I feel that a provision like this should not be in this Act alone but also in a Central Act. The Central Government and the Provincial Governments should restrain any sort of parades of this nature in any form with any kind of uniforms, whatever may be the object in view. If the object is merely social amelioration of the people, I do not see where drills and uniforms come in. If the object is any other purpose, then there is no use of closing the doors of the stable after the horse is stolen, because the Governments both Central and Provincial must come to realise that such parades and congregations are not consistent with the welfare of the public and the general maintenance of law and order. If I may venture to dilate for a moment, 20 years ago in 1928–29 when I was in Central Europe, the very features that are now unfortunately prevalent in this country were prevalent there. Groups of people under their leaders were parading there, sometimes with blank weapons and sometimes with positive weapons and sometimes with no weapons at all. They paraded in uniforms. At that time it was said that they had no ambitions, political or

17th November 1949] [Dr. A. Lakshmanaswami Mudaliyar]

otherwise. But it soon led to a state of affairs when the originators of such movements did not have the same control over their followers. These groups of people took to political activity and they were the precursors of the fascist regime in Germany and the regime of Mussolini in Italy. I therefore wish to give this warning both to the Central Government and the Provincial Governments. Now that we have a national government which can be replaced on political ideologies, there is no question of any particular group of people exercising these rights which ultimately will not be for the safety of the country. As this measure is intended for the maintenance of public order in the country, this is a thing which should be taken note of.

“Secondly Sir, the Leader of the Opposition was referring to certain trends in Government policy and Government activities which may directly or indirectly contribute to the prevalence of lawlessness in the country. The most important thing is that all forms of lawlessness can be easily stirred up on a hungry stomach—that is the psychology of the human mind; and if we have people hungry, without employment, without clothes going about from place to place, they are the persons who are easily susceptible to any influence and who will therefore find themselves easily brought into the clutches of those few unscrupulous people who like to see that lawlessness prevails.

3-15
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“Sir, the Leader of the Opposition referred to the Prohibition Bill that had been passed by this House and said that there were certain difficulties that had arisen, one of which was that consequent upon Prohibition and the loss of Rs. 20 crores, the Government were not in a position to look to the amenities of the common man and the increase of unemployment, the increase of unrest, was due largely to that measure. He also said that Prohibition was responsible for this sort of lawlessness taking place. You, Sir, very rightly asked him in what way Prohibition could be held responsible for increase of lawlessness. May I, without his permission, answer the question? Prohibition has created a number of new offences.”

MR. PRESIDENT :—“You have my permission; his permission is not necessary. In fact, my complaint was that he did not answer it properly.”

DR. A. LAKSHMANASWAMI MUDALIYAR :—“I shall venture to answer that query, Sir; and I hope I will satisfy you. My point is this: The enforcement of Prohibition in the whole of this Province has led to illicit distillation. Illicit distillation has brought about a number of lawless people into the fold of some men who have the means of utilizing these lawless elements for their own purposes. The spirit of lawlessness has prevailed, the spirit of lawlessness has spread, not merely among men, but unfortunately among women also, and sometimes among children, because these are the people that are used as agents and stooges for the carrying on of the campaign of illicit distillation. Whole villages, it has been reported, have gone on to illicit distillation. If a whole village goes to illicit distillation, let me tell you there is no public opinion

[Dr. A. Lakshmanaswami Mudaliyar] [17th November 1949]

in that village; everybody wants somehow or other to conceal the fact that he is defying law. Once that defiance of law spreads among the people, there is no limit to it."

DR. V. K. JOHN :—" If I may interrupt the speaker for a moment, Mr. President, may I draw your attention to the absence of Ministers here? There are only two of them and they are looking into files."

THE HON. SRI K. MADHAVA MENON :—" It is very wrong to say that I am looking into files; I am taking notes of every word said here, and I am in charge of the Bill."

DR. A. LAKSHMANASWAMI MUDALIYAR :—" I am sorry for the interruption, because one can see and also hear. I do not think there is anything inconsistent in it. That apart, Sir, the point I wish to stress in no light mood at all is that this enforcement or apparent enforcement of Prohibition for the whole Province has led to innocent people being dragged into lawlessness and women and children also becoming lawless, and the spirit of lawlessness once released, there is no knowing as to where it may lead us. That is my respectful submission, Sir, in regard to Prohibition.

" Sir, there have been many criticisms made about this Bill. I wish the Government to note the fact that it is not from any spirit of contradicting what the Government have got to say that we have attempted to make these remarks. It is really because we wish to help the Government—our own interests are so intertwined with the maintenance of law and order that it is our desire that the Government should do everything to promote law and order, but by such means as will enforce law and order and as will bring public opinion to their side.

" May I, in this connexion, draw attention to one aspect of the question? I have found that within the last few days a number of ordinances were issued on the ground that the Legislature was not in session. You referred to that fact humorously when my friend Mr. Govindachari unconsciously wanted that an ordinance could be passed, not realizing that by that he meant his own expulsion from this House or the winding up of this House. When an ordinance was passed by the foreign Government, every one of us felt that it was a wrong method and criticism was abundant in the press and on the platform about the unholy method of passing ordinances. I wish that this Government should take note of the fact that ordinance-raj is not real-raj, that we are here as legislators, and with a Legislature so often supporting the Government and being content with dotting their i's and crossing their t's, the Government need not hesitate about bringing their Bills before it or of summoning the Legislature. It is a matter in which I hope that hereafter at any rate, there will be no occasion to pass such ordinances. I was surprised to find that even in regard to a Bill where the Select Committee had appointed and practically all the stages had been gone through till the report of the Select Committee was submitted and the Select Committee stage was over, the Bill was not proceeded with and an ordinance was passed—i.e., with regard to the Rent Control Bill."

17th November 1949]

DR. V. K. JOHN :—“ They are establishing Ram Rajya by ordinances.”

MR. PRESIDENT :—“ Ram Rajya was based on ordinances; there was no Legislative Council then.”

DR. A. LAKSHMANASWAMI MUDALIYAR :—“ Ram Rajya was ushered in after ordinance rule previously, but I do not know which rajya will be ushered in after this ordinance rule. That is my fear.

“ I would lastly appeal to the Government not to take it that the Opposition Members here or any Members of the House who have spoken strongly about certain of the clauses here are not as much imbued with the spirit of supporting law and order as any Member of the Treasury Bench. I ask them to consider this matter carefully.

“ One word more and I have done. Sir, on a former occasion, I referred to the point that important Bills were passed by the House, and that those Bills were referred to a Select Committee. I think it is a matter on which I must take serious exception in this case. Here is the most vital, the most important and the most complicated Bill being passed for a period of three years, and the Bill is to extend to the whole Province. I should think that prudence as well as necessity should dictate the appointment of a Select Committee, where every point of view could be thrashed out. I hope in future at any rate whenever large measures of this nature infringing upon the rights of the public in one way or the other are attempted to be passed, the Government will take note of the fact that the Select Committee procedure should be a *sine qua non* before bringing such legislation on the floor of the Legislature concerned.”

*SRI N. RANGA REDDI :—“ Mr. President, Sir, though I am not opposing the Bill, I should like to say a few words about it. When Government have to deal with an organization whose motto is violence, they will have to consider whether the methods and policies that have been followed previously will have to be followed now also. Various speakers who spoke on this subject have said that while the Britisher was here, and when such things were done, we raised our voice of protest. I would however like to say there is one important difference. So far as previous parties are concerned, they never wanted to overthrow the party in power by resorting to violence. They wanted to overthrow the party in power by using persuasive methods, by conciliation and by pleading. But so far as the present organization is concerned, their main motto is to overthrow the present Government by violence; when that is so, one will have to seriously consider whether all the policies and methods that have been followed previously should be made applicable to this organization. The technique of these Communists is entirely different. They have been working in various ways and therefore it is a matter for serious doubt whether the old policy should be continued. By that I should not be understood that I am lending my complete support to all the provisions

[Sri N. Ranga Reddi] [17th November 1949]

of this Bill. I know there has been some difficulty pointed out, if this Bill is to be applied to the whole Province. Even on a previous occasion when the Bill was discussed on the floor of this House, it was my feeling that irrespective of the fact that one organization was an organization whose motto was to overthrow the Government by violence, if it was made applicable to the whole Province, very serious consequences would follow. I submit there is one feature which is common to the village feuds and the Communist organization. Both of them use violence to achieve their purpose. If the purpose of this Bill is to rope in the leaders of the village feuds and the adherents of the village factions, I should certainly say it shall not be enacted; but if this Bill is to reach the members of the Communist organization, I should unhesitatingly give my support to the provisions of this Bill.

“ As regards the delegation of powers under Section 15, I may remind the House that in the eighteenth century Burke is reported to have said ‘ Men are greater than measures ’; and what he said in the eighteenth century is equally applicable to the twentieth century. Whatever laws you may enact, whatever provisions you may introduce in the enactments, unless the people who are to execute the provisions are proper persons, the enactments will be nullified practically, and even mischievous consequences may follow. Therefore, I submit if the Government want to reach people who are reported to be Communists and whose activities are dangerous, the persons entrusted with the duty of implementing the enactment should be above-board, should be high officers, not, as mentioned previously by head constables or constables. So, that point has to be carefully examined. I know very recently in the Cuddapah district there was an incident where a student leader was falsely personated by a Communist. A person was addressing a meeting; no doubt he was a Communist, but when he was asked his name, he gave out the name of a student leader of the Razampet High School. The matter went up to the headmaster of the institution who was asked to report if the student-leader took part in the meeting and if he spoke at that meeting. As you yourself said, Mr. President, while you were incarcerated in jail, there was some charge against you and you were made responsible for something. In the same manner, although that student-leader attended the school on that day, there was somebody interested in saying that he addressed a meeting in another place and he was a Communist. Of course, I advised him to say that he was not the concerned person and that he did not address the meeting that day and later, the matter was dropped. I say this only to emphasize that when things are reported in this manner, unless there is some scrutiny, the object of the enactment will be frustrated. On the other hand, it will even create mischief and more discontent. I submit therefore that the delegation of powers should be to persons like the District Magistrate and they should be made personally responsible for the orders of detention,—it should not be a case of merely dotting the i's and crossing the t's as my friend Mr. Lakshmanaswami Mudaliyar said, especially because there is to be no redress to be sought from courts.

17th November 1949] [Sri N. Ranga Reddi]

" I do not know, Sir, whether I will be within the four corners of our rules, if I were to refer to the case of police firing. So far as police firing is concerned, I know it is done normally under the ordinary law; in respect of police firing, it is necessary that an enquiry should be made in every case of police firing but no enquiry is made in very many cases. It is a matter of considerable importance. The Government should take note of the question and consider seriously whether it is not necessary in the interests of the public that there should be a public enquiry to satisfy the people that the firing was done only in the interests of law and order and that there has been no excessive use of violence . . . "

MR. PRESIDENT :—" Mr. Madhava Menon, does this Bill provide for firing by the Police? "

THE HON. SRI K. MADHAVA MENON :—" No. "

* SRI N. RANGA REDDI :—" Sir, even if there is none, in such cases where police firing is resorted to, it is absolutely necessary that there should be a sort of an enquiry by an impartial tribunal, though not by a court of law, some sort of advisory body where these can be gone into so that it will also satisfy people to a very great extent. "

MR. PRESIDENT :—" The Bill contemplates Advisory Councils. "

SRI N. RANGA REDDI :—" Not only in cases in which reference is made by the Government to the Advisory Council but also even in cases of police firing, invariably it should be enquired into by an Advisory Council where the circumstances leading to the firing could be thrashed out and a decision may be arrived at whether there was any excesses on the part of the police. "

* SRI M. NARAYANA RAO :—" Mr. President, I know that the Hon. the Law Minister is a capable lawyer and will answer all the legal points raised by members on the Opposition and the hon. Leader of the Opposition. As a layman, I am not very much concerned with legal complications but I want to place before the House facts as they are existing at present in the country. I am surprised that the hon. Member from Krishna raised objection to this Bill though the Communist menace is at its height in that district. Is it because he wanted to be in the good books of the Communists? Otherwise, I cannot find any reason for his raising a voice of opposition to this very important measure. "

DR. V. K. JOHN :—" Is it in order for an hon. Member to attribute motives to an hon. Member? "

MR. PRESIDENT :—" It is not a motive but it is a reason. "

THE HON. SRI K. MADHAVA MENON :—" Did not my hon. Friend say that any man with any sense of self-respect will never vote for this Bill. Is that not attributing motives? "

[17th November 1949]

* SRI M. NARAYANA RAO :—“ In the existing circumstances of the country, I would like that the Government be given as much power as possible to deal with this emergency. Communist tactics are very mischievous. They are resorting to violence and subversive methods and secrecy is their motto and so it requires almost an autocrat to deal with such kind of persons and the popular Government should be given a blank cheque to deal with the situation as they think fit but always taking care that the officials concerned do not misbehave themselves. I even sometimes feel that this democratic form of Government is not suited to our country and there must be autocracy for sometime at least until things are set right.”

DR. V. K. JOHN :—“ Why not liquidate the Legislature? ”

* SRI M. NARAYANA RAO :—“ In the present circumstances, I feel that, the Government should be empowered to deal with the situation. Otherwise, the life and property of the people would be at stake. It is plain from the charge-sheet given by the Government how the Communists have been misbehaving themselves. Some of the hon. Members on the opposite side said that on account of the prevailing conditions in the country, Communists are making headway. I ask them, why not they go to polls in the next elections and why should they take to violence if the existing circumstances are favourable to throw out the Congress Government? Why should they have recourse to looting, arson and murder? If the country does not want Congressmen to rule, that will be an occasion for the Communist to throw them out by preaching their doctrine to the people and they can then rule the country according to their principles. If conditions in the country are favourable for Communism, certainly they can occupy the Treasury Benches and rule the country if the people return them to power. I may say in this connexion, that the present circumstances in the country are not of the making of the Congress Ministry. The British have ruled the country for 200 years and they have left the country starving and naked. Herculean efforts are being made by the Central and Provincial Governments to get over these difficulties and I am sure that within sometime, we will certainly establish ‘ Ram Rajya ’ in this country based on the principles laid down by our great Mahatmaji; though this set of Congressmen may not be able to fulfil it, another set of Congressmen will certainly see the establishment of ‘ Ram Rajya ’. I would request the Opposition to come in and establish Ram Rajya if they can and then only we can have peace and contentment in the country. I would suggest to the Government that the best way of combating Communism is Gandhism. We cannot find a greater Communist than Mahatmaji. His Communism transcends all this sort of Communism that these people speak of. So, if you want to combat Communism in right earnest, it is only Gandhism and that will save the country from it. I would impress on the Government once again, as I said on so many previous occasions that they should

17th November 1949] [Sri M. Narayana Rao]

take a bold step and see that the Government machinery is decentralised, that the villager is given responsibility to rule himself and not only that, to make him responsible for his own clothing, shelter and food. Unless, as Mahatmaji said, you make the village self-sufficient, I do not think there can be Ram Rajya and it is that doctrine that should be followed and you will see that Prohibition will be a success and everything will be a success. It should be a self-contained unit; there need not be any law courts, there need be no lawyers and no law colleges; arm the village panchayats with full powers (for that will establish Ram Rajya) and there should be full-scale Prohibition. In Ram Rajya, you cannot but have Prohibition, however much it may cost us. If Prohibition is to be a success, powers must be vested in the village. The Gandhian ideology must be followed in toto and Ram Rajya established to combat Communism and make the country prosperous and happy. I would like the Hon. Minister to see that the powers given to local officers are not abused. As has been pointed out in the Lower House, there have been excesses and the Police had done very bad things which cannot be uttered. I would request him to see that such things do not occur. People who have committed crimes should be punished but one cannot tolerate indiscriminate attack upon whole villages, molestation of women and destruction of property. What did property do? There is a hotel in Eluru; I do not know whether any Communists were there. Thinking that there was a Communist there, there was a Police raid on the hotel; the hotel-keeper was arrested and taken away and all the furniture in the hotel was broken and the food materials were thrown into wells. I do not know what the food materials did and why the furniture were broken. There was another incident in Korukolli in Bhimavaram taluk where there was a clash between the Communists and the Police with the result that a Police Sub-Inspector was shot and wounded by a Communist. Naturally there was a raid by the Police and when people knew about it, they merely walked out of the village but still the Police broke the doors and began to destroy furniture and much mischief was done. I would, therefore, urge on the Hon. Minister to see that there are no excesses on the part of the Police and that innocent people are not in any way harmed or disturbed. I want that all powers should be given to the Government but they should exercise those powers very carefully and see that their officers do not misbehave themselves."

SRI M. NARAYANA MENON :—" Mr. President, much apprehension has been felt about Clause 4-A of the Bill. After all, Sir, it is not so frightful as hon. Members would have it. That clause refers only to the order of detention and does not refer to imprisonment or punishment or anything like that. It says that the order shall not be invalid or unlawful or improper on certain grounds and that is, any defect, vagueness, insufficiency or delay in any communication made to the person detained under the Act. But on other grounds, it may be held to be invalid. If there is any defect or vagueness in any communication made to

[Sri M. Narayana Menon] [17th November 1949]

the detenu as to the grounds of the detention, these things shall not invalidate the order. The position is further well-guarded in sub-clause (3) of clause 3. It is said that a communication to the person detained shall be sent but it does not say by what time it should be made. Anyhow, it must be within six months. Such communication must be made without disclosing facts which the Government consider would be against public interests. That is one limitation on the liability of the Government to give facts and communicate with the person. Further, there is the other limitation, namely, that it must be sufficient to enable the person to make a representation. We must take all these things into consideration, that the Government are bound to communicate the grounds of detention, they must give sufficient facts to enable him to make representation though the Government are not bound to disclose facts which would be against public interests to disclose. Then clause 3 goes on to say that there shall be an Advisory Council before which these cases will be placed and that body would give their opinion to the Government whether the person could be kept under detention or not. Then comes the third stage, namely the stage at which the party may go before a court. In that case the clause says that such order of detention cannot be deemed to be invalid on grounds that I have read in clause 4-A; but it may be invalid on other grounds. After all, it is not the real reason for detention that is referred to in clause 4-A but it is the defect in the communication made to the detenu; this defect or vagueness is only secondary. If on the primary thing, namely, the grounds of detention, there is any defect, the order of detention will go. So that clause 4-A is not so frightful. It is only an indication that on flimsy grounds the order of detention should not be disposed of. Then, Sir, another fear was expressed, and that was by Dr. Lakshmanaswami Mudaliyar. It is this: if a person harbours another person other than the husband or wife, he would be liable under clause 2-A, sub-clause (3). Even if the harboured person is his son, the father would be liable. It may be the father has not heard that his son is guilty, the learned doctor said, and supposing the son asked the father to give him five rupees for running away, will not the father be affected by his act? That was his question. I say, 'No', the father will not be liable. For what the clause says, is this: 'Whoever, knowing or having reason to believe that an order for the detention of any person', etc. So when the father harbours his son not knowing that the son is guilty, he is not liable for his action. Only when he acts knowing or having reason to believe that an order of detention is passed against his son, is he liable. But in the case of a husband or wife, even though he or she harbours the other, they are not liable. Suppose a husband harbours his wife knowing she is guilty. Under sub-clause (3) he is not liable for his action."

MR. PRESIDENT :—"Why is it so?"

SRI M. NARAYANA MENON :—"Because a husband is only one-half or more than one-half of his wife; or the wife is one-half

17th November 1949] [Sri M. Narayana Menon]

or more than one-half of the husband. So, they, not being a full person, cannot be held guilty. (Laughter.) But in the case of the father and son it is otherwise. Each is liable for his act. The father is asked to place his duty to the State above his duty to his son in the interests of the State. Unless we are prepared to do that, this country cannot be free from Communism. With these words I resume my seat."

JANAB ABDUL LATIF FAROOKHI :—" Mr. President, Sir."

MR. PRESIDENT :—" The voluminous note that you have, seems to be alarming." (Laughter.)

* JANAB ABDUL LATIF FAROOKHI :—" No, Sir, I do not have any notes. Sir, if we are commenting on or criticising this measure, it is not with a view to allow people who are breakers of law to go on as they like. We do certainly like and we do certainly wish that Government should be armed with sufficient power to punish those who carry on work against the interests of society. Sir, it is quite necessary that the liberty of the individual should be protected. Civil liberty is a sacred thing and it is a fundamental thing in any law, in any constitution in any land. Therefore, Sir, we want that in spite of all the defects in the measure we should help the Government by suggesting that the Bill should be referred to select committee. This motion is moved in order to save the prestige of Government; for they do not like to accept amendments moved on the floor of the House. So, we thought of suggesting this method of referring the Bill to a select committee, where they can sit calmly and discuss coolly without the disadvantage of being defeated on particular amendments. There they would be in a position to accept the amendments brought in by the Opposition. Sir, that is the idea in bringing forward this amendment to refer the Bill to select committee. Sir, as has been pointed out by several members, any law, that has no backing of the people, is a law that will only aggravate the situation and not redeem the situation. If only the Hon. Minister would go round the country and see what the reactions are to the laws they have passed, he will find that there is no justification for piling one repressive law on another. Even during the two hundred and odd years of foreign rule . . ."

MR. PRESIDENT :—" Please come to the Bill."

* JANAB ABDUL LATIF FAROOKHI :—" Even during the two hundred and odd years of foreign rule, the foreign government has not produced so many ordinances and so many repressive laws. If this Bill is passed, I feel, that after the 26th January next some of the most important clauses will be ineffective. For instance, take the clause which takes away or ousts the jurisdiction of the High Court. Section 202 of the draft constitution of the Indian Union empowers the High Court to issue writs. Now if this measure is going to be passed, is it not going to conflict

[Janab Abdul Latif Farookhi] [17th November 1949]

with the draft constitution? Is it not good grace for this Government to accept the amendments of the Opposition, which are going to be moved, and see that this measure is brought in line with the constitution of India as a whole. Now, Sir, let us consider, why such laws are necessary? Let us look into the reason. People have been referring to Communist activities. Sir, the other day I said, Government are, to some extent, instrumental in creating or bringing about the rise in the cost of living. The Hon. Minister for Transport at that time contradicted me when I said that the bus fares have been increased. He said it was not possible that without his knowledge the fares could be increased. I have verified my statement and have found that what I said is correct. This shows that Government have no knowledge of the acts done by their subordinate officers. I personally made inquiries; I saw the increased bus fares put up in notice boards on some routes, declaring that from the 7th instant onwards the bus fares have been increased. Sir, what is the effect of all this? There is discontent among the people. Speaking in a public meeting on the occasion of the birthday of our great Prime Minister, Pandit Nehru, the president of the Provincial Congress Committee of Madras said that there is great discontent and immense suffering among the people in this Province. And he said that but for the fact that the great leader Pandit Nehru is at the helm of administration, people would have risen in revolt. If that be the correct version of the speech, I quite agree with him that there is great distress, great discontent and great hardship among the people; and this has given rise to many things, on account of which, such laws as the present one have to be passed. Sir, instead of removing the cause, there is no use in trying to remedy the effect. All these laws which the Government are passing are only calculated to remove the effect and not the cause. If the Government were only kind enough to see why it is that people are amenable to the tactics of the Communists the Government will find, it is only because of the suffering of the people, their starvation and hunger and scanty clothing. It is to remedy these sufferings Government should direct their attention and not to passing repressive laws. Sir, as was pointed out by Dr. Lakshmanaswami Mudaliyar, if a father helps or harbours his son, he would be punished under this Bill, even though the father had no knowledge of the son's guilt. I would wish the father is exempted from punishment on the same analogy of the husband harbouring wife or the wife harbouring husband. For should we not expect the same human feeling as exists between husband and wife to exist between father and son. A loving brother would do the same thing to his sister, and a loving sister would do the same thing to her brother. Sir, this aspect of the question has been totally ignored by the draftsmen of this measure.

"Now, Sir, is there a real necessity to rush through this legislation. The Hon. Law Minister said that they came to know of the defects of the Bill after the decision of the High Court. When they wanted to pass the Ordinance after the expiry of the

17th November 1949] [Janab Abdul Latif Farookhi]

term of the last Act, was there any interval; and in that interval was there any commotion, was there any upheaval, was there any revolt in the country to necessitate the passing of the Ordinance? We wish that people are ruled with less of ordinances and repressive laws. So we think that this measure ought not to have been brought at all. This legislation reflects very badly upon the Government. It is going to haul up not only bad people, dangerous people, not only Communists. (Interruption by the Hon. Sri K. Madhava Menon.)—My Hon. Friend, Mr. Madhava Menon says, my speech here will do me good in the next elections. The fact is, Sir, if only Hon. Ministers go round the country they will know what the people are saying about them. They say that Government are out to haul up and confine in jail people who will stand against them in the next elections, so that the field may be made clear for themselves to get elected."

MR. PRESIDENT :—" Do you believe in that statement? " (Laughter.)

* JANAB ABDUL LATIF FAROOKHI :—" No, Sir. (Laughter.) I am only placing before the House what the people are feeling in the matter. Sir, it is not only necessary that Government should be above suspicion; but it is also necessary that they should give proof, positive proof of the fact that no suspicion can be entertained against them. Therefore, Sir, it is in the interests of the Government themselves, in the interests of the party in power, they should stay their hand from this kind of repressive legislation. Sir, I have always been saying that there is only one party in the Province to which the people can look for help, and that is the Congress Party. The Communist Party is a party of people who are out to disrupt society. So, I say, in the interest of the Congress Party itself, the prestige of Government should not be jeopardised. It is because of this we, on this side, want to offer suggestions on all measures they bring in, but Government feel that our suggestions are obstructive. I am only sorry for that. I appeal to the Government to sit down calmly and think over, ' what is the use of ordinance and what is the use of laws they pass; ' for ultimately it will be found they will not be obeyed by the people. Sir, we all know, certain laws have been passed formerly by a foreign Government; they were passed by a bureaucratic Government. Did any one of us think that those laws were just; did any one of us respect those laws. In fact Congress encouraged people to disobey them. Similarly, perhaps a time will come when people will take pride to break the measures which are now being passed. I do not want such a time should come.

" I want to place one more fact before the House. The Father of the Nation, Mahatma Gandhi, was murdered. The murderers of Mahatma Gandhi have been hanged but they were allowed every opportunity to appeal to the highest court. Even granting that a particular man is a Communist, should not the Government allow him the right of appeal to the highest court? 4 p.m.

[Janab Abdul Latif Farookhi] [17th November 1949]

Why should they say that the District Magistrate is the highest authority? The result of preventing people from going to the highest court will be that more discontent will prevail. Wherever there is repression, you will find that there is more sympathy for the repressed party. Sympathy for the Congress was there on account of the fact that the British Government began to repress that party. Even people who do not sympathize with a party begin to sympathize with it on account of the fact that that party is unjustly repressed. Therefore it is better that the Government do not create a situation in which they will be creating more sympathizers for the party which they want to put down. It is in that spirit we say that it is better for the Government to place all their cards before a Select Committee. Why should they be afraid of a Select Committee? After all, a Select Committee is a committee of this House and in it certainly their own partymen will be in predominance."

MR. PRESIDENT :—" That is an argument which will cut both ways."

* JANAB ABDUL LATIF FAROOKHI :—" But it will give the Opposition the satisfaction that we have had constructive discussion. It is quite another thing if we don't succeed in convincing the Government even after the discussion. The House is aware that the Government accepted many amendments in the Select Committee which they did not like to accept on the floor of the House. Such being the case, there is a greater chance of their accepting reasonable amendments in the Select Committee which they may not accept on the floor of the House thinking that it is against their prestige or that, if they are accepted in this House, they will have to go back to the Assembly and that the legislation will be delayed. Therefore, reference to a Select Committee will be a better course for the Government as well as the Opposition. It is in that spirit that the Opposition has moved the amendment. I hope that the Government will accept the Opposition's amendment at least once in a way.

" With these words, I second the amendment."

* JANAB K. T. M. AHAMED IBRAHIM :—" Mr. President, Sir, when the Maintenance of Public Order Bill, 1947, was discussed in this House, the severity and drastic nature of its provisions were pointed out and certain amendments were moved. At that time it was pointed out that the amendments could not be accepted as, if accepted, they would have to go before the other House which was not in session then, and that their acceptance would indefinitely postpone the passage of the Bill into law. But it was hoped, and that hope was raised on account of certain words that came from the other side, that the spirit of the amendments would be kept in view and that on some future occasion those amendments would be duly considered. But on the other hand, the Government have now come forward with the measure in a more drastic and severe form. One can understand the drastic nature of the Bill if he reads clauses 4-A and 19. It is an

17th November 1949] [Janab K. T. M. Ahamed Ibrahim]

admitted fact that personal liberty is a most fundamental and cherished right of every citizen and no Constitution in the world would easily interfere with it. Articles 15 and 15-A of the Draft Constitution of our own country provide safeguards for preserving personal liberty. Article 15-A provides that an arrested person must be produced before the nearest Magistrate within twenty-four hours of his arrest and that the grounds of arrest should be communicated to him as early as possible. That shows how much personal liberty is valued in the future Constitution of our own country."

MR. PRESIDENT :—" Does Article 15-A of the Draft Constitution say that the arrested person must be produced before a Magistrate within twenty-four hours? I am doubtful whether the Constitution goes into such details."

* JANAB K. T. M. AHAMED IBRAHIM :—" Yes, Sir, it says that he must be produced before the nearest Magistrate within twenty-four hours of his arrest. But exceptions are provided for preventive detention. In the interests of the security of the State, a man can be detained for three months. But that is only an exception to the main article.

" The provisions of this Bill encroach on the personal liberty of the citizen."

MR. PRESIDENT :—" The Draft Constitution has not yet become an Act. If it becomes an Act, this will go to the extent that this is repugnant to it."

JANAB K. T. M. AHAMED IBRAHIM :—" No Constitution in the world would allow interference with personal liberty."

MR. PRESIDENT :—" I would request the hon. Member to say if he has got anything to say on the provisions of this Bill. I want to finish the discussion on this Bill to-day."

* JANAB K. T. M. AHAMED IBRAHIM :—" When such a drastic measure is passed, the Government must see that the personal liberty is not interfered with ordinarily, especially when the interference is not by the Provincial Government themselves. Under clause 15, the Government can delegate their powers to any officer or authority subordinate to them. When power is exercised by subordinate authorities, it is liable to gross abuse. The possibility of abuse of powers should be minimized as far as possible. Are there sufficient safeguards in this Bill for minimizing the abuse of power? In spite of its drastic nature, under the 1947 Bill, there was at least the fear that the detenu concerned may move the court and have some sort of remedy if there was abuse of power. This Bill removes even that fear and subordinate officials are given perfect immunity under clause 4-A. I do not know why the Government are afraid of the judiciary. In almost every law brought before this House by the present Ministry, there has always been a clause for ousting the jurisdiction of the

[Janab K. T. M. Ahamed Ibrahim] [17th November 1949]

court. Clauses 4-A and 19 are the crowning clauses looked at from that point of view. Even if a sub-magistrate or police officer acts under the delegated powers, his acts cannot be questioned in a court of law and the detenu has to submit to his order without demur. Clause 4-A says : ' No order of detention . . . shall be deemed to be invalid or unlawful or improper on the ground of any defect, vagueness or insufficiency, or any delay . . . ' That is most comprehensive, and leaves no scope for a detenu to seek remedy in a court of law. *Ex post facto* legislation is an unheard of thing. Clause 19 gives retrospective effect to all acts done under the previous Act and Ordinances. When this Bill is passed, the cases which are now pending before the High Court will have to be withdrawn. It cannot be said that the subordinate officials have been doing their duty without any irregularity. Between September 1948 and November 1949, I understand that the High Court has dealt with about 250 cases. In about 175 of them, the High Court has ordered the release of the detenues. That shows the manner in which some subordinate officers are exercising their powers. About four hundred cases are now pending before the High Court. Does this not show that there is necessity for the courts to interfere at some stage or other? Does not the very fact that in about 175 cases the High Court has reversed the orders passed show that there must be some provision to prevent abuse? After all, subordinate officials also are human and they cannot be said to be infallible. Therefore, they should not be made to feel that their acts or orders will not be questioned.

" We were told in 1947 that section 3 of the Act provided for proper remedies to the aggrieved persons and that the Advisory Council would be very effective. But we wanted a judicial tribunal to be appointed and moved an amendment to that effect. We were told that the Advisory Council would be as good as a Judicial Tribunal. Clause 4-A nullifies even the safeguards provided in clause 3. It would have been more frank and candid on the part of the Government if they had decided that clause 3 be deleted.

" Much has been said about the Communists. Now that the Communist organizations have been banned under the Criminal Law Amendment Act, I do not know how this Act can be put into operation against Communists. If a person is a member of a Communist organization, he will have to be dealt with under the Criminal Law Amendment Act, for being a member of an unlawful organization.

" We have always been with the Government in the maintenance of law and order and suppression of violence. The Government themselves have admitted on more than one occasion the help rendered by the members of my party. For suppressing violence and maintaining law and order, I do not feel that a drastic Bill of this nature is absolutely necessary. Besides there are no sufficient safeguards in it. Clauses 4-A and 19 take away even the little safeguard which was in the Act."

17th November 1949]

* THE HON. SRI K. MADHAVA MENON :—“ Mr. President, Sir, with due deference to my hon. Friends on the Opposition who have generally opposed this Bill and in particular to my hon. Friends like Mr. B. Narayanaswami Nayudu and Dr. Lakshmanaswami Mudaliyar; who opposed the introduction of clause 4-A in it, let me say, Sir, that most of the opposition to this Bill and most of the criticisms levelled against the Government were based on mere sentimental grounds, or I might say, if it is not unparliamentary, that they are mere shibbolaths. My hon. Friend, the Leader of the Opposition, said, ‘ You are responsible for the whole thing. What have you done during all these three years of your administration? You have ploughed the field, on which the Communists have sowed and are now thriving. This is not the way to administer your Government. You do not know your people. You cannot understand their needs. You have introduced prohibition all of a sudden when the people were not prepared. You have not attended to food-production. You have imposed controls all round; you have controlled food, cloth, cement, iron and steel, etc. You have introduced controls only to provide jobs for your underlings.’ Sir, this was the general trend of his criticisms against the Bill. Sir, I can understand his criticism against the Government imposing controls on certain articles. That is not a thing which is peculiar to this Province. Controls exist in every Province in India and it is the Government of India who are administering these controls. But to say that we have introduced controls in order to provide jobs for our underlings, is, I must say, Sir, rather most uncharitable, which should not have come from a person of the type of my hon. Friend, the Leader of the Opposition.

4-15
p.m.

“ Sir, my hon. Friend Mr. Suryanarayana Rao said—and these are his very words—‘ I do not feel that any self-respecting Member of this House should give his imprimatur to this steam-roller Bill.’ Sir, I do not want to reply to him in the same strain. I only want him to realize that self-respect is not the monopoly of the Members of the Opposition. If we are to judge people by our own notions of self-respect, we might differ. But I would only say that it is certainly no argument, but an abuse; and abuse is no argument. Perhaps in the eyes of Mr. Suryanarayana Rao, Members who vote for the Bill may not appear to have self-respect, but in the eyes of others, the position may be different. All the same, Sir, I submit, that such remarks as these, even if there is any substance in their argument, would spoil the case and abuse of persons who pilot the Bill or who belong to a particular party, is certainly bad advocacy, even if there is a good cause. That is all I have to say with regard to my hon. Friend Mr. R. Suryanarayana Rao.

“ Sir, Dr. John said that the Government must remove the cause of discontent in the country. As I have already said in the other House, we are arguing the question in a vicious circle. I admit, Sir, that discontent is a fertile field for the mischief-monger to make his mischief. But if there is a particular set of

[Sri K. Madhava Menon] [17th November 1949]

people who are out to create discontent among the people in whom there is no discontent before, and who are out to do away with the existing order of society, to bring chaos, disorder and confusion in the land, whose programme and policy is to deliberately create strikes and lock-outs and thereby stop production, who are out to induce peasants not to cultivate or to harvest, what is it that we should do first? He asks us to stop discontent first. In order to stop discontent, we must put an end to the activities of the people who are creating discontent among the people. Sir, let me give the House an instance of what happened when we actually released certain persons from detention on account of vagueness of charge or for some other reason. The District Magistrate warned us saying, 'If you release those persons, you cannot expect me to have the crops in that particular village harvested.' We, however, disregarded his warning and released these people and the result was exactly what he had said, and the crops could not be harvested. You want us to give food to the people, but there are a set of people in the country who advise the ryots not to part with their grains, to prevent labourers from harvesting the crops and who make it impossible for the Government to arrange for procurement and distribution of foodgrains. Therefore, Sir, you are arguing in a vicious circle when you say, 'First remove the discontent and everything will follow,' but I say, that to remove discontent, we must first remove the people who are out to create discontent.

"Then, Sir, my hon. Friend Dr. John put us in a very difficult dilemma by espousing certain principles and doctrines. He said, 'All your difficulties are due to your nationalization of bus transport, to your programme of khaddar and to your policy of prohibition. If you have committed mistakes, you were human; if you correct your mistakes, you will be prudent. If you persist in those mistakes, you are stupid.' Sir, my hon. Friend wants that whatever he thinks as a mistake, we should admit it and correct it in order to get his approbation that we are prudent. But if we feel that it is not a mistake, and go on with our policy, we will be getting the appellation of stupidity from him. Sir, in this case, I would rather be inclined to have the appellation of stupidity than be foolhardy enough to release these Communists and retrace our programmes and policies in order to get his approbation of prudence and allow the Communists to indulge in their subversive activities, which threaten the very existence of the civil liberties of the large masses of our people in the villages.

"Sir, in this connexion, let me say a word about civil liberty of which much has been said in this House. Sir, hon. Members sitting in their cushions and lounging in their sofas, under the breeze and cool air of the legislature can talk glibly of all sorts of things about the civil liberty of the people who are detained and say, 'There is no civil liberty in the country; there is no security for people and their property. There is no freedom of movement and people's rights and activities are curtailed and so on.' Let hon. Members who indulge in such talks, just imagine

17th November 1949] [Sri K. Madhava Menon]

for a moment, the experiences which I myself had, and which the Government had during the last few months. My hon. Friend said, 'Remove the causes of discontent.' I ask him, Sir, was the derailment of the engine at Erode due to discontent or want of food? Was the burning down of the Madukarai Cement Factory, due to discontent or want of food? Was the setting of fire at the Golden Rock workshop due to want of food or discontent? Were the dacoities, arson, loot and murders that happened in the various parts of the Province due to discontent or want of food? Was the brutal murder of one Subbarayudu, the President of the Weavers' Society in Agenta Vemavaram, an act due to want of food? Sir, I have given a catalogue of the murders, dacoities, lootings, arsons and other atrocities perpetrated by these Communists in this Province. Are they all due to want of food? Hon. Members must understand that there is an organized and deliberate attempt on the part of a set of people to destroy the existing order of things, to bring about chaos and confusion in the land and to overthrow the present Government. Sir, recently an incident happened in Mathurai, where by a single act of these people, the food problem was solved and civil liberty restored! A dozen Communists entered into a hotel, and asked for food to be served and after having had a good repast of biriyani and pulavu, they came out of the hotel, and when the hotel-keeper asked them to pay the bill, they showed the sickle and the hammer. That is how one set of people solved their food problem and got their civil liberty in a moment! Is it for such kind of people that hon. Members plead for supply of food and civil liberty? What about the civil liberty of the hotel-keeper and of the hunger of the large mass of people who are starving in the country?

"Sir, in this connexion, let me just narrate what has happened in a village in the West Godavari district, where I had actually visited. There is a village called Agenta Vemavaram in the West Godavari district. There, there was one man, named Subbarayudu, who was the president of the weavers' co-operative society and president of the local congress committee. Our Communist friends there found it impossible to start a rival society there. They wanted to protect the civil liberties of the people in the village. One day, in broad day-light they entered the house of Subbarayudu with the sickle and hammer, and with the sickle chopped him inch by inch and with the hammer knocked his brain out and broke his bones. I went there with the Collector and the District Superintendent of Police two days after the murder. The population of the village was about 5,000 to 6,000, but not one dared to come out of his house. We went from house to house and wanted them to assemble in a meeting and to tell them that there was a provision in the Indian Penal Code, by which a man may commit even murder in self-defence and that nothing would happen to him. But nobody would come out of the house. They said, 'There are half-a-dozen people watching us and if we go and attend your meeting, to-morrow we will share the same fate as Subbarayudu.' Two hours after, the District Magistrate and

[Sri K. Madhava Menon] [17th November 1949]

the District Superintendent of Police were able to arrest half-a-dozen people. In half an hour, 5,000 people came out and heard me for 1½ hours. I should like to ask, 'What about the civil liberty of these 5,000 people? Don't you care for it?' We may sit comfortably here, talk glibly of civil liberty and things of that sort. I submit, Sir, that the test of civil liberty is not by the freedom of a few individuals, but the freedom of the majority of the citizens in the country and it is the intention of the Government to protect and preserve the freedom of the majority of the people, even if it were necessary to curb and curtail the freedom of a few handful of individuals, who are out to disturb the society. That is the purpose of this Bill, Sir, and that is the reason for including clause 4-A in it, although it is somewhat drastic.

"Sir, I do not want to go into the details of the criticisms levelled against this Bill. Some of the objections raised by my hon. Friends, Dr. Lakshmanaswami Mudaliyar and Mr. Bhima Rao, were to the issue of the ordinance. In that connexion, Sir, the name of the Right Hon. Srinivasa Sastri was brought in, who opposed a similar ordinance issued at the time when Mr. C. Rajagopalachari was the Premier of this Province, and who is now the Governor-General of India. Let me, in this connexion, Sir, read to the House the exact words of the Right Hon. Sastri and the reply given to him by Mr. C. Rajagopalachari, and I cannot give a better answer than what the then Premier had given to those people who spoke against the Ordinance Raj. The Rt. Hon. Sastri said:

' * * * I am not against his having taken an ordinance for this purpose at all. In fact, I said to many of my friends that he was perfectly justified in getting an ordinance issued.' * * *

'I am going just to say a word on this ordinance. I am, Sir, of opinion that when the Prime Minister found that this Bill he had already published had no chance of being passed by both Houses and receiving the assent of the Governor in good time to stay the proceedings in Madras in court, he was entitled to use any means at his disposal for this purpose. And, as section 88 always bespoke and spoke beforehand the initiation of the Ministers themselves, it did not seem to derogate in any way from the position that he used his section for saving a situation which otherwise threatened to become very acute.'

"Sir, my hon. Friend Mr. Bhima Rao referred to the judgment of the Bihar High Court. We did not know the judgment then. But a couple of months afterwards, that judgment was followed by a judgment of the Calcutta High Court. I may submit, Sir, that there are Public Safety Acts in every Province, containing a provision similar to ours, stating, 'It shall be in force for a particular period and it shall be extended by a notification by the Government.' Sir, there are four or five Acts of the Central Legislature wherein provision for extension by notification has been made. After the decision of the Calcutta High Court appeared in *The Hindu*, we began to consider the question and there was considerable difference of opinion in the matter even between Judges and lawyers. Sir, the Bihar Act was set aside by the Federal Court on the ground that the Act contained a provision which stated that further than extending the duration of the Act

17th November 1949] [Sri K. Madhava Menon]

by notification, the Government may by notification modify or vary any of the provisions of that Act. That was the main point which was considered by the Federal Court which declared that provision *ultra vires*. We had our own doubts whether our legislation would be *ultra vires* of the High Court. We took legal opinion in the matter and we consulted our legal experts and their opinion were equally divided. When the Calcutta High Court's decision was followed by the Federal Court's decision, we thought, as prudent men, we had better rectify the mistake, which had been pointed out by the Federal Court and that is the main reason why we thought of issuing an ordinance and of bringing the Bill in the present form, Sir. The ordinance was immediately issued because a number of *habeas corpus* applications were pending before the High Court. The ordinance had to be issued in a day or two as otherwise many persons would have to be released. We had to wait for a day or two to convince the Governor-General. That was the emergency for the ordinance.

4.30
p.m.

“ Sir, Mahatma Gandhi has been quoted in this connexion. I may tell Mr. Bhima Rao that so far as the Central Government are concerned, the Governor-General has got the power now to issue ordinances even if the Legislature is in session, and it need not be approved by the Legislature later on. That is the way in which ordinances are issued. Because in emergencies we have to exercise such powers. I may quote here the words of the Hon. C. Rajagopalachari, when he was the Premier of Madras. He said in reply to the Rt. Hon. V. S. Srinivasa Sastriyar :—

‘ Not only that; I must specially tender my grateful thanks to the Rt. Hon. Srinivasa Sastriyar for another matter. He has stated on a very delicate matter his opinion with which even the Leader of the Opposition seems to be joining though from a different angle of vision. Ideas of civil liberty we have seen from all quarters. But that would be distraction. The main trend of the argument is this. I tender my thanks to him because he said, ‘ Contrary to the views of some of my friends I hold that the Prime Minister was justified in having recourse to an ordinance for the purpose in view.’ It is a great thing to have that endorsement from the Rt. Hon. Srinivasa Sastri. I do not mind the Leader of the Opposition's doubts in the matter. I am greatly strengthened by the view of Mr. Sastri. As I have already said, it is plain to any one who knows the art and technique of Government and administration, that the Legislature is supreme and that the Legislature has the Executive to carry out its policy while in office. The Legislature is not sitting. To wait till the Assembly was summoned would be like the foolish servant who said, ‘ The tiger is on the rails. I am not able to go to the booking office. Please telegraph instructions to me.’ The Executive has to carry out the policy of the Legislature and the will of the Legislature without a moment's interruption or break. It is because of this that in all constitutions in one form or another this power is provided for the Executive. There is nothing to object for those who are students of politics or administration. The country is full of prejudices—prejudices born of religion, prejudices born of custom, prejudices born of antipathy and prejudices born of political movement. Therefore this opposition to the ordinance is a sheer superstition, a prejudice born of the previous political movement, which has no reasonable basis whatsoever. That must be obvious to those who know what Government is and what Government has to be.’

Sir, this is my answer to those who object to ordinances.

“ Sir, I now come to the gravamen of the charge, i.e., clause 4-A. Except clause 4-A and clause 4-B, in all other respects this

[Sri K. Madhava Menon] [17th November 1949]

Bill is the same as the one passed in 1947. Clause 4-A relates to vagueness in communication and clause 4-B relates to parole. Nobody has objected to this. But I am surprised to hear objections to clause 19. This clause 19 is intended to validate all acts done during the interregnum. There can be no objection to this at all.

“ I take very strong exception to the very uncharitable remarks that have been made about the attitude of this Government towards the High Court. Mr. Suryanarayana Rao said, ‘ you want to shut out the High Court.’ Hon. Members asked why should the Government be suspicious of the High Court. This is all trying to put things which we never meant nor did we have in our minds. Sir, I will be the last person to say anything about the High Court and the judgments of the High Court. I respect them much more than many other people who want to make political capital out of this matter. What did the High Court say? They did not say that the Act was wrong. They stated that some of the actions of the Government, according to the interpretation of the Act, were not in terms of the Act as it stood. This is perfectly right. This is only for our safety. The High Court has to interpret the Act as it has been laid down. According to the interpretation of Their Lordships, some of the actions of the Government are contrary to the very Act passed by the Legislature. Their Lordships stated that according to their interpretation, that was not what the Legislature meant. They stated, ‘ you have done a wrong; cancel your orders.’ I repeat again, Sir, what was the intention of the Legislature? According to me the intention of the Legislature, when once an order is passed under clause 2, is that the grounds on which the order has been passed or the sufficiency of the grounds or even the vagueness of the grounds should not be a matter for decision by the Court. Otherwise what is the purpose in detaining a person without trial? If we have sufficient material to charge him with, why should we detain him without trial? I do not want to prevent him from taking his trial. Nor is it possible that the requirements of clause 2 for detention can be dispensed with. I entirely agree. There is no doubt about that. With due deference, I may say that the High Court has rightly stated that the detaining authority must be satisfied, and that he must have specifically applied his mind to the case. It is not simply signing a cyclostyled paper for detention, which is wrong. He must have applied his mind, and after applying his mind, he must be satisfied that the person concerned is one who, in the interests of public peace and safety, must be detained.

“ Now I come to the question of communicating the grounds of detention to the persons detained, i.e., clause 3. Mr. Narayanaswami Naidu gave an instance of a man who was detained for four months after the grounds of detention were communicated to him, and that eight months afterwards, the order was confirmed. According to clause 4 the order shall not be in force for more than six months from the date of the confirmation of the order. If it were the intention of the Legislature that the six months’ period must start from the date of the order, the Legislature would have

17th November 1949] [Sri K. Madhava Menon]

definitely stated so. On the other hand, the Legislature stated that the District Magistrate or an officer of the Government can arrest a person, and after arresting him, if he is a delegated authority, he shall report with as much quickness as possible to the Government of his having arrested the person, furnishing at the same time the grounds for the arrest. Then the Government communicate the grounds to the person, and, after hearing his version, place it before the Advisory Council. On receipt of the report of the Advisory Council, the Government either confirm the order or release the detenu. The period of six months commence from the date on which the order is confirmed. It is the intention of the Legislature itself. (Interruption.) I say that delays in communication of the grounds are due to various reasons. I do not mince matters. There are various conditions in which delay is likely to occur. In most of the cases, the delay is due to this. The grounds are communicated to the detenus. They deny the grounds. This has to be checked up. Further material evidence is given. Even then he makes denials and assertions. These denials and assertions are to be checked up. During the days of Hyderabad trouble, the District Magistrates had very little time to think of communicating the grounds for detention. They naturally took some time to communicate the grounds. In those circumstances, delay was unavoidable. There was no way out of it. In the midst of cyclone relief operations now in the Circars, if a person is detained, and if the District Magistrate communicates the grounds for detention to the detenu after some 10 days, it cannot be said that it was done by *mala fide* intentions. It is impossible to avoid the delay in those circumstances. It is only to meet those contingencies clause 4-A is necessary. In this connexion, what has the High Court, in the Full Bench decision, which is the authoritative decision in the matter, stated? Section 16 of our old Act, and clause 16 of the present Bill say—

‘No order made in exercise of any power conferred by or under this Act or deemed to have been made under this Act by virtue of section 19 shall be called in question in any court.’

Now, what is the intention of the Legislature in passing a clause like this? The High Court has interpreted this section. Their Lordships say in defining the section—

‘What then is the residuum of power and jurisdiction of this court? It is the power to interfere and set at liberty a person who is being detained by an order which though purporting to be made under section 2 of Madras Act I of 1947, is not in fact such an order. This will be so in the following circumstances:

(a) when the order is not duly authenticated, as for example, when it is passed by an officer or authority not empowered under section 15 of the Act;

(b) when the person detained in pursuance of the order is not the person intended to be detained, that is to say, when there is a mistake of identity;

(c) when there is lack of *bona fides*; and

(d) when it is established that the essential requirement of section 2, namely, the satisfaction of the Provincial Government or an officer or other authority empowered under section 15 with respect to the particular person that he is acting or about to act in any manner prejudicial to the public safety or the maintenance of public order and with a view to preventing him it is necessary to direct him to be detained or otherwise dealt with

[Sri K. Madhava Menon] [17th November 1949]

under section 2 (1) of the Act, is not present. If it is established that neither the Provincial Government nor the officer or other authority empowered under section 15 has exercised its or his mind on the material placed before it or him, then an order of detention, though purporting to be passed under section 2 (2) must be deemed to be not an order under section 2.

It is only in the above four conditions the Court can interfere. This was Their Lordships' finding. They say—

'If these grounds do not exist, it is well established on the highest authority that this Court 'cannot investigate the sufficiency of the material or the reasonableness of the grounds' upon which the Government or the empowered officer or authority had been satisfied.' It is not competent for this court to call upon the Government or the detaining authority to disclose the information and material on which it or he was satisfied as to the necessity for the detention of the person concerned. The satisfaction required by the section is the satisfaction of the Government or the empowered authority and not the satisfaction of this court. There is no question of fact which can be submitted to this court in this matter. This position was fairly conceded by learned counsel appearing on behalf of the petitioners.'

Sir, I stand by this decision. What I have attempted to do in clause 4-A is only this. The decision of the High Court is with reference to lack of *bona fides* and not with reference to the delay in communicating the grounds or the insufficiency of the grounds. My submission, Sir, is that this is an extraordinary legislation to meet an extraordinary situation. We have ample instances where we have released men against the advice of the District Magistrates. The persons released have been responsible for the Madukarai Cement Factory fire and the Tiruppur murder. There are many cases in which the District Magistrates are satisfied that these persons should be detained. During the days of Hyderabad trouble, the officers knew definitely that certain people were out for trouble. But they could not prove that they had evidence. These people encouraged the Razakars from the Hyderabad State to abduct and hold people for ransom. They could only give a vague ground saying 'this man is suspected of helping the Razakars or trying to get ransom for the Razakars.' We know, as a matter of fact, that was being done, but we could not have definite proof of it. In such circumstances, is it not proper that we should be allowed to detain a man who is suspected of having done a mischief? After all, it is preventive detention. It is not a case where the offence has already taken place. It is only to prevent a certain action. In such cases, necessarily vagueness must be waived. It is not a case of want of respect to the High Court. The High Court having pointed out the defects in the orders and the mistakes that have been committed, it was not our attempt to at once bring out clause 4-A, but our attempt was to give concise and classified instructions to the detaining authorities to strictly adhere to the suggestions given by the High Court and see that the mistakes pointed out did not occur. So, we issued an order as early as February 1949 that on the basis of some recent judgment of the Madras High Court on certain *habeas corpus* applications, there must be evidence in the order of detention. In fact, we classified everyone of the defects pointed out and gave particular instructions to the authorities concerned 'Such and such are the mistakes pointed out by the High Court and you should certainly avoid those mistakes and see that things which are allowed under

17th November 1949] [Sri K. Madhava Menon]

the Act and which are necessary alone should be done and nothing more.' We did want to act according to the instructions. But instances occurred where we found that the persons who had been released were responsible for certain mischiefs. In most of the cases which we ourselves examined and released the persons on assertions by them or denials by them or otherwise, we found that those released persons went underground and directed from there all mischief and trouble. It was quite impossible to get at them or stop the mischief. Mr. Suryanarayana Rao and some others have been saying that nobody could dream of such a provision as clause 4-A. Pandit Nehruji's name has also been brought into the picture as the guardian of liberty. In this connexion, I may say that the Government of India presided over by Pandit Nehruji sent us a communication as early as 10th February 1949, the contents of which are as follows :—

'A basic point in most of the Provincial Public Safety Acts is that the Executive is the sole judge of the necessity of detention and that the High Courts have no jurisdiction to examine merits of the grounds underlying orders of detention. Most Provincial Public Safety Acts also contain provision that the grounds of detention should be disclosed to the detenus so as to enable them to make a representation. It was never the intention that High Courts should examine the grounds as disclosed to the detenu and come to a decision as to whether these justified the order of detention.

In certain *Habeas Corpus* cases High Courts have held that the grounds disclosed to detenus are insufficient, indefinite or vague and that the detention is therefore illegal. A well-known Communist detenu was set at liberty some time ago on this ground. The Government of India consider that there should be no room for any doubt that the communication to detenus of the grounds of detention is intended for the sole purpose of enabling them to make a representation to the Executive and that it is not open to High Courts to examine the merits of the grounds so disclosed and decide whether these justify detention or not. After discussion of this point with the Government of India, the Central Provinces Government put through an amendment to their Public Safety Act, and a copy of the amended section is enclosed for your information. The Government of India recommend that Provincial Governments will take an early opportunity of incorporating in their Public Safety Acts an amendment similar to that made by the Central Provinces Government.'

The draft of the proviso suggested by them is this :—

'Provided that neither the said order nor the detention of the said person thereunder shall be deemed to be invalid or unlawful or improper on the ground of any defect, vagueness or insufficiency of the communication made to such person under this section.'

Sri Suryanarayana Rao was thinking that he was in the good company of the High Court; I am also in the good company if he thinks that Nehruji's company is good, in putting this section. In spite of the fact that we had received this letter from the Government of India, we waited till now and we found that it was impossible to take any other step. So we have followed the advice tendered to us by the Government of India.

'Sir, I may even say that it is not the intention that the provisions of clause 2 should not be complied with. Certainly the detenu is entitled to everything to which he is entitled under section 2. When the Bill as originally drafted was presented to the Lower House, in clause 4-A there was some slight difference in the language. On the suggestion of Mr. Vaidyanatha Ayyar, to make

[Sri K. Madhava Menon] [17th November 1949]

the intention clear that the clause applied only subject to the provisions of clause 3, it was slightly amended, and it is in the amended form before this House. The original clause was ' . . . on the ground of any defect, vagueness or insufficiency, or any delay, in any communication . . . ' It has been changed into ' . . . on the ground of any defect, vagueness, insufficiency or delay in any communication . . . ' The word 'any' before 'delay' has been omitted so that the rights of the detenu under section 2 are protected, that is, the satisfaction of the detaining authority and that he has applied his mind to the facts of the case. The High Court is certainly entitled to go into the question whether the detaining authority has been satisfied and whether the satisfaction has been after applying his mind. But if there is any delay, insufficiency or vagueness in the grounds or in communicating them to the detenu, it shall not be a reason for declaring the detention order invalid. That is the object and that is, according to me, the object of the Legislature in originally passing section 16 of this Bill. So, I am sorry I cannot accept the resolution to refer the Bill to a Select Committee. After all, the only question under dispute is clause 4-A and the rest of the Bill has been re-enacted."

MR. PRESIDENT :—" The question is—

' that the Bill to provide for preventive detention, imposition of collective fines, control of meetings and processions and of essential services, and certain other purposes be referred to a Select Committee.'

The motion was put to vote and lost.

" A poll was demanded.

" The question was again put and a poll was demanded a second time.

" The House then divided as follows :—

Ayes.

- | | |
|--------------------------------------|-----------------------------------|
| 1 Dr. V. K. John. | 6 Sri R. Suryanarayana Rao. |
| 2 Janab Abdul Latif Farookhi. | 7 Janab K. Uppi. |
| 3 Sri B. Narayanaswami Nayudu. | 8 Janab K. T. M. Ahamed Ibrahim. |
| 4 Dr. Syed Tajuddin. | 9 Janab V. Hamid Sultan Maricair. |
| 5 Sri M. D. T. Kumaraswami Mudaliar. | |

Noes.

- | | |
|--------------------------------------|-------------------------------|
| 1 The Hon. Dr. T. S. S. Rajan. | 12 Sri M. Sudarsanam. |
| 2 The Hon. Sri K. Madhava Menon. | 13 Sri A. Govindachari. |
| 3 The Hon. Sri C. Perumalsami Reddi. | 14 Sri M. K. Sundarama Iyer. |
| 4 Sri K. Venkataswami Nayudu. | 15 Sri S. Jayaram Reddiar. |
| 5 Sri S. B. Adityan. | 16 Sri N. Ranga Reddi. |
| 6 Sri L. Subbarama Reddy. | 17 Sri V. Nagappa Chettiyar. |
| 7 Sri M. Narayana Rao. | 18 Sri G. Venkata Reddy. |
| 8 Sri N. Sankara Reddi. | 19 Dr. P. S. Srinivasa Ayyar. |
| 9 Sri N. Venkatachalamaji. | 20 Sri C. Veerabhadra Rao. |
| 10 Sri T. Purushotham. | 21 Sri B. Bhima Rao. |
| 11 Sri K. Manathunainatha Desigar. | |

Neutrals — Nil."

The motion was declared lost.

17th November 1949]

MR. PRESIDENT :—" The motion is—

' that the Bill to provide for preventive detention, imposition of collective fines, control of meetings and processions and of essential services, and certain other purposes be taken into consideration at once '."

The motion was carried.

Clause 2 (1).

SRI B. NARAYANASWAMI NAYUDU :—" I move—

5 p.m.

' Add the following after the word " order " occurring in line 4 of clause 2 (1) :—

" in writing and also set out therein or in a separate order the grounds on which the order has been made and particulars sufficient to enable the detenu to make a representation against the order ".

" Sir, I submit that the present Act does not provide that the order should be in writing and should contain the reasons for which a man is detained. This is not a question of sufficiency or vagueness or any other thing. You have only to apply your mind and give the order in writing setting out the grounds for detention. Do you contemplate that the order will merely be oral and what is it going to be? It is not clear. Supposing a subordinate officer arrests a man, is it not necessary that he should then and there give the order in writing that so and so is arrested and detained on such and such grounds. I have very carefully considered this and I feel that necessary instructions should be issued by the Government to the subordinate officers. These defects were pointed out by the High Court in several orders. These orders are not carried out in spirit, though it is said that they are doing so. Their instructions are one way, but the law is made to be in another way. I ask, is it not necessary to write out the order. Are you going to order the detention of a particular person without writing out an order, by simply telling the Inspector concerned over the telephone, ' Please put so and so in jail.' Is it what is contemplated by you? I submit that it is not correct and it is quite unfair on the part of the Government."

SRI R. SURYANARAYANA RAO :—" I second the amendment."

* THE HON. SRI K. MADHAVA MENON :—" Sir, I oppose the amendment. This amendment nullifies in effect the necessity for this Act. Because, if the Provincial Government or if the officer concerned is satisfied that a man is about to act in a dangerous manner prejudicial to public safety, he should be detained and put in prison at once. The officer cannot sit and search out the various grounds on which he should be detained and all that. The officer concerned cannot wait to get full information from the Police as to the grounds for which he should be detained and verify the records and then issue the order in writing setting out the grounds. I submit that it would be quite impossible to do that."

[17th November 1949]

SRI R. SURYANARAYANA RAO :—“ If a particular person is going to act in an objectional manner, I think the ordinary law can as well be applied and the man can be booked.”

The amendment was then put to vote and declared lost.

SRI B. NARAYANASWAMI NAYUDU :—“ Sir, I move—

‘ For the words “ report the fact ” after the word “ forthwith ”, in clause 2 (2) substitute the following :—
“ or within twenty-four hours forward it ”.’

Sir, the Act says the fact of an order passed under the Act by an officer, should be reported to the Provincial Government forthwith. The intention is that the fact should be reported to the Government immediately without any delay. With regard to this, the High Court have observed in a particular case that they regretted to know that the officer sent the report only after 20 days. Is this the way in which the meaning of the word ‘ forthwith ’ should be observed. Therefore, I feel that there must be a definite mention in the Act that it should be at least within 24 hours the report should be sent. In all criminal cases, matters should not be delayed. So I feel that it is necessary that these words ‘ or within 24 hours ’ should be included in the clause. This is not a question of sufficiency, proof or evidence. This is only a question where you should apply your mind. I am only suggesting the introduction of the words simply to stress the need for the officers’ reporting to the Government at once. Are you going to tell the High Court, ‘ Well. Never mind. Even if the report was sent by the officer to us after 30 days or 40 days, it does not matter. You must simply confirm our orders ’. I will tell you that it is quite unfair.”

* SRI B. BHIMA RAO :—“ I oppose this amendment, Sir. In this connexion I would like to give an instance. During the recent police action against Hyderabad, the District Magistrate of Bellary took us into confidence and was giving us some information. He was sending all kinds of reinforcements and ammunitions to Hospet and other places, so that Razakars should not come again. We were making all efforts to secure all the ammunition in the town of Bellary. All the police that was available was there at that moment. One day, some constables brought about ten or fifteen people who had crossed the Tungabhadra river at various points and had come to the town of Bellary obviously with a view to spying what we were doing there. Sir, at such a time, is it possible to make an enquiry as to why these 15 people came there, verify facts and give an order and report the matter to the Government within 24 hours? Should the District Magistrate go into the reasons why each man came there from the other side, whether they were Razakars, whether they have come for spying purposes or for any other purpose? It is rather difficult for the District Magistrate to do all these at such a time. Certainly, it would take some time to make an adequate and complete enquiry as to why they have come. I have been in agreement with the hon. members opposite on many occasions. But in a matter like this, first things should have to be attended to first and priority should be given for important matters. It is impossible

17th November 1949] [Sri B. Bhima Rao]

to accept the amendment which says that the grounds should be given within 24 hours and the fact of detention should be reported to the Government. I have got several more things to say. But, I do not like to take up the time of the House, as the President wants to finish discussion of this Bill by 6 p.m. Once again I may say that it is very difficult to accept this amendment."

* SRI R. SURYANARAYANA RAO :—" I am surprised, Sir, that an eminent lawyer of the standing of Mr. Bhima Rao should come forward with such a remark as the one which he has just now mentioned. Could not these people be dealt with and booked under the ordinary laws? It is daily happening in the City of Madras that persons who are loitering about in the streets with no ostensible means of livelihood, are being taken by the police and imprisoned. Cannot the same thing be done in such cases also? It really surprises me that of all persons, Mr. Bhima Rao should bring forward such excuses, especially in regard to the matter of detention, which has a different purpose altogether."

* THE HON. SRI K. MADHAVA MENON :—" I am sorry my Friend Mr. Suryanarayana Rao is confusing the issue. What Mr. Narayanaswami Nayudu wants by his amendment is only a definition of the word 'forthwith.' We say that the fact of issue of an order under the Act shall be reported to the Government forthwith. Mr. Narayanaswami Nayudu wants it to be stated specifically that it should be reported within 24 hours. Section 4-A relates to the communication to the detenu. Section 2 relates to the order of detention. In one of the cases, the High Court has defined this 'forthwith' and have conceded 'reasonable delay.' So, we need not define 'forthwith' here.

"I know that we can take action under section 151 of the Criminal Procedure Code. But, you must remember that when action is taken under this section, you can detain a man only for fifteen days and on the fifteenth day he should be released. But in many cases, it takes the officers to enquire into the full particulars about the person who is detained and it happens more often than once that it is not possible to get the full information before the fifteen days. The position is that the man is to be detained immediately and it is not possible to get the required information within fifteen days. Hence it is not possible to take action under section 151 of the Criminal Procedure Code. In some cases, the officers have used this section 151. But in a majority of cases, where it is not possible to get the required information within fifteen days, this section is useless.

The amendment was then put to vote and declared lost.

The original clause 2 was put and carried.

Clause 2-A (3).

* JANAB ABDUL LATIF FAROOKHI :—" Sir, I move—

'(1) In clause 2-A, sub-clause (3) for the words " husband or wife ", the words " husband, wife, parent, child, brother or sister " shall be substituted.'

[Janab Abdul Latif Farookhi] [17th November 1949]

(2) Add the following as explanation to clause 2-A—

- (1) “ Parent ” means and includes maternal and paternal grand-parents how high so ever.
- (2) “ Child ” means and includes agnate or cognate child how low so ever’.

5-15
p.m.

“ The only aspect in this amendment is its human aspect. I submit that if a husband is allowed to harbour the wife or the wife is allowed to harbour the husband, more consideration should be given to the love of the parents and to the love of the grandfather and grandmother. Sir, I repeat that this has a human aspect about it. The amendment is a simple one and does not in any way alter the provisions of the Bill or the principles that underlie the measure. I appeal to the Hon. Minister in charge of the Bill to accept this amendment.”

DR. V. K. JOHN :—“ I second it.”

MR. PRESIDENT :—“ The question is—

‘ (1) In clause 2-A, sub-clause (3) for the words “ husband or wife ”, the words “ husband, wife, parent, child, brother or sister ” shall be substituted.’

(2) Add the following as explanation to clause 2-A—

(1) “ Parent ” means and includes maternal and paternal grand-parents how high so ever.

(2) “ Child ” means and includes agnate or cognate child how low so ever.’ ”

* THE HON. SRI K. MADHAVA MENON :—“ Sir, I oppose the amendment, and there are two reasons for my doing so. In the first place this clause is a mere incorporation of what is contained in the Indian Penal Code on the question of harbouring persons wanted by the Government to be apprehended. That section stands here as it is, excepting the husband or the wife, in the matter of harbour or concealment. Secondly, the clause provides for the arrest of a person only if he harbours one, against whom, he knows, there is a warrant for arrest pending. Sir, we have come across many instances in which persons were harboured by those who knew full well that the people they were harbouring were wanted persons. But we have been considerate in dealing with cases which deserved such consideration. There are cases also where the person who harbours is pretty old, and in such cases the individual is let off. And there are deliberate acts too. Recently a mother was prosecuted for harbouring her son and when questioned by the police if she was aware of the fact, that she should not have done so, she replied, ‘ I know he is a Communist and a warrant is pending against him.’ So, Sir, there are cases in which the entire family is communist. In the circumstances, I cannot accept the amendment.”

The amendment was put and lost.

The original clause 2-A was put and carried.

17th November 1949] [Sri K. Madhava Menon]

Clause 2-B was put and carried.

Clause 3 was taken up for consideration.

SRI B. NARAYANASWAMI NAYUDU :—“ Sir, I move that—

‘ In line 6 of clause 3 (1) after the word “ communicate ”, the words “ within ten days after the arrest of the detenu ”, shall be inserted.

Add the following explanation at the end of clause 3 (1) :—

“ Explanation.—The ground and other particulars shall be clear as to time, place and other matters upon which the order under section 2, clause (1) was made ’.”

Under the present clause, there is no time stipulated within which the grounds on which the order of detention is issued should be communicated. On the other hand the Bill provides that all delays in the matter of such communication shall be condoned. Sir, this is not at all fair. Recently the High Court pointed out certain defects in the Act while disposing of *Habeas Corpus* appeals from the detenus and it took in certain cases one year for the Government to pass orders rectifying them. The High Court has definitely stated that no delay should occur and should be tolerated. Sir, the District Magistrate issues an order detaining a person. Then he reports to the Government. The Government obtain the explanation of the detenu concerned and places it before the Advisory Council. The period of detention is then fixed as six months from the date the Government confirm the detention order. Sir, should there not be a time-limit at least while communicating the grounds to the detenu which at present may stretch to even one year and more? Section 151 of the Criminal Procedure Code limits the period of preventive detention to 15 days. But in this measure there is no time-limit at all. And while the High Court has pointed out there should be no delay, you come forward with a measure which says ‘ delays shall not render the order invalid ’. Instead of saying that, I ask you, ‘ why not avoid delays by putting in a definite period in the relevant clause ? ’ Again, the High Court has no jurisdiction over this legislation. That being so, is it not the duty of the Government to provide for a definite date by which a detenu should be informed of the grounds on which he was detained?

“ Now, I shall deal with the ‘ explanation ’ suggested under clause 3 (1). Here again, I would like to quote the High Court’s judgment which clearly states that the grounds of detention should be as clear as possible to enable the detenu to prepare his defence. I am not dealing here with sufficiency of evidence or proof. All that I want to say is that the detenu must be made to know in clear language the particulars relating to the time, place and other matters upon which the order of detention is issued. That is, the order must state that ‘ this person, at such and such a time wanted to commit or was about to commit or was likely to commit an illegal act at such and such a place, his antecedents were such, and so his presence in that particular locality was prejudicial to public interests ’. If that clause does not contain these particulars,

[Sri B. Narayanaswami Nayudu] [17th November 1949]

there is no use of having that clause at all. After all clause 3 is only directory and need not be observed at all. That is the only logical conclusion one will arrive at. I would therefore say that when you pass an order it should be definite and contain all particulars of detention. Sir, I would like to put one question to the Hon. the Law Minister. You say that only certain grounds will be disclosed to the detenus and not all. But when the High Court points out that the communication should not be vague, you say such vagueness shall not be called in question in any court, hereafter. Sir, is it not a case of the ultimate power vesting in the Executive and not challengeable in a Court of Law? I feel that the High Court is entitled to an interference in such arbitrary detentions, and as this Bill takes away the power of such interference, I request my amendment may be accepted."

SRI M. D. T. KUMARASWAMI MUDALIAR :—" I second it."

MR. PRESIDENT :—" The question is that :

' In line 6 of clause 3 (1) after the word " communicate " the words " within ten days after the arrest of the detenu ", shall be inserted.

Add the following explanation at the end of clause 3 (1) :—

" *Explanation.*—The ground and other particulars shall be clear as to time, place and other matters upon which the order under section 2, clause (1) was made " . " "

THE HON. SRI K. MADHAVA MENON :—" I oppose the amendment, Sir. It is not for me to say whether the High Court has any jurisdiction and it is for the learned Judges of the High Court to decide. I would just try to allay certain misgivings entertained by hon. Members of this House. Sir, I may assure you that there has been no delay in most of the cases and in a very few cases in which there was some delay, there were sufficient grounds for it. I feel that ten days' time as suggested by my hon. Friend is too short a period—conceding there are delays in a few cases—for preparing the grounds and communicating the same to the detenu concerned. It is highly impracticable to rush through the whole matter within ten days. As regards mentioning time, place, etc., I think it is not necessary to do so. For instance, one's antecedents, the atmosphere in which he lives, the locality to which he belongs, etc., are sufficient to convince the Magistrate that he is likely to act in a particular manner prejudicial to public interests and therefore has to be detained. There is also the case of others already detained, who commit offences in the jail. Therefore, it is not always possible to mention the time, the place and other matters in the communication sent to the detenus. We shall, however, see that all the difficulties pointed out by the High Court are guarded against to the maximum extent possible. There may be a few cases of exception in which it would not be fair to restrict the freedom of the officers. If they are bound by such restrictions then the Act will not be workable."

The amendment was put and lost.

17th November 1949]

Clause 3 (5).

* DR. V. K. JOHN :—" I move that—

' Clause 3 (5) shall be omitted and the following shall be substituted :—

" The Provincial Government shall accept the advice of the Advisory Council and pass orders accordingly ".

Sir, while moving that clause 3 (5) be omitted, I would like to point out that clause 16 takes away the jurisdiction of the High Court in the matter of preferring *Habeas Corpus* appeals. That being so, the Government must at least follow the advice of the Advisory Council before whom under Clause 3 (4) the Government can make representations and to whom the Government can supply information. Sir, the Government constitute Advisory Councils with eminent men, like High Court Judges, and others, who are available to constitute themselves into such Councils. I feel that although the Council is advisory in name, its advice shall be accepted and acted upon accordingly. The Judicial Committee of the Privy Council itself is an advisory body but there is a convention, which is law, that His Majesty shall accept their advice and a decree will be passed accordingly. Therefore, I suggest to the Government that they should accept the advice of these councils. The other day, I put a question to the Hon. the Law Minister whether there were cases in which they had accepted the advice of the Advisory Councils at all and after some difficulty he said he could not disclose the fact. I say, let this House at least insist upon the Government to take their advice. Suppose an innocent man is locked up. The Advisory Council says 'release him; there is no case against him.' Then the Government should at once let him free. There is some virtue in doing so. I hope my hon. Friends who could not support me in my opposing this measure *in toto* will at least lend their support to this amendment."

SRI R. SURYANARAYANA RAO :—" I second it."

MR. PRESIDENT :—" The question is that—

' Clause 3 (5) shall be omitted and the following shall be substituted :—

" The Provincial Government shall accept the advice of the Advisory Council and pass orders accordingly ".

THE HON. SRI K. MADHAVA MENON :—" I am sorry, Sir, that Dr. John should have moved such an amendment. I may tell the House that seldom we interfere with the advice given by the Advisory Councils. The council makes recommendations in certain cases for release. In almost all the cases we respect that decision. But in some cases we are not in a position to accept their advice. In such cases the circumstances are such that warrant this course. I would take the House into my confidence and say that in several cases, notwithstanding the severe warnings by our officers that certain persons should not be released, we did release them in accordance with the decision of the Advisory Council. But what was the result? It had cost the lives of not only some Government

[Sri K. Madhava Menon] [17th November 1949]

officials but also of innocent men. I shall just give figures relating to detentions and releases which will show how Government are tackling this question. In November 1948, we had 744 detenus in this Province and the peak figure was in April 1949. The total number of detentions between November 1948 and 1949 was 1,169 and the number of releases 609. Today the figure stands at 644, that is 100 less than in November last year. The Advisory Council is therefore quickly attending to the cases and we are trying to accept its recommendations to the maximum extent possible. It is only in very rare cases we find it is impossible to accept the decision of the Advisory Council where it would be dangerous to do so in public interests. I therefore oppose the amendment."

The amendment was put and lost.

Clause 3 was put and carried.

Clause 4 was taken up for consideration.

JANAB ABDUL LATIF FAROOKHI :—" I move that—

' In clause 4, sub-clause (2) the following words at the end " and thereafter if and so often as it is again extended by a similar direction made in the same manner ", shall be deleted.

Sub-clause (3) of clause 4 shall also be deleted.'

Sir, after a man is detained for six months, he is given an opportunity to submit an explanation in writing. (Interruption.) Then when that explanation is received by the Advisory Council, it takes another six months for the Council to dispose of . . . (The Hon. Sri K. Madhava Menon : No, not at all, so. It is impossible.) and the Government in their turn take yet another six months to pass an order. If the detenu is being detained like this endlessly, is it fair, Sir? Therefore, if my amendment is accepted, many of the sufferings of the detenus will go and I would request the Hon. the Law Minister to accept it."

DR. V. K. JOHN.—" I second it."

MR. PRESIDENT :—" The question is that—

' In clause 4, sub-clause (2), the following words at the end " and thereafter if and so often as it is again extended by a similar direction made in the same manner," shall be deleted.

Sub-clause (3) of clause 4 shall also be deleted.' "

THE HON. SRI K. MADHAVA MENON :—" I oppose the amendment. It is not correct to say that it will take six months for us to communicate the grounds to the detenu and that it will take another six months each for the Advisory Council and the Government to dispose of the case. The Government have provided that even before the expiry of six months, an order confirming a detention can be cancelled. Government feel as much for the detenus as hon. Members and we shall see that no order is issued without sufficient reasons."

The amendment was put and lost.

Clause 4 was put and carried.

17th November 1949]

Clause 4-A.

* DR. V. K. JOHN :—“ Sir, I move—
‘ that clause 4-A be omitted.’

5-30
p.m.

Sir, this amendment is a very serious amendment and we on this side of this House want to press with as much force as we can for the acceptance of the amendment. Hon. Minister, Mr. Madhava Menon, said this was in conformity with the intention of the Act. The High Court expressed otherwise. Then the Hon. Minister said that the Government of India said that there should be a provision like this.

“ Now, Sir, I say, this is a very serious encroachment on the liberty of the subject. No man, innocent or not guilty, has any right to go to the High Court and say, ‘ I am not guilty, please examine my case.’ I say, Sir, as it is, clause 16 takes away the jurisdiction of the court and if the High Court said we have jurisdiction, they want to circumvent the jurisdiction of the High Court and take away their powers.

“ The new constitution will be passed very soon and will come into existence on the 26th of January next. Article 202 read with clauses 14, 15 and 15-A will certainly establish the position that clauses 4-A and 16 of this Bill will be illegal. What is the use of passing something which is going to discredit the Government, that they have gone to this extent and taken away the jurisdiction of the Court? Why should you pass something which will cease to be law after the 26th January? I ask them to examine the provisions of the constitution of this Country, the fundamental rights clause which the High Court will enforce. This Bill is against the fundamental rights of the constitution the draft of which has almost been passed. I protest against this clause 4-A and press that the amendment to delete it be accepted. We cannot be a party to this encroachment on the liberty of the subject and we cannot be a party to the exclusion of the jurisdiction of the court.”

SRI B. NARAYANASWAMI NAYUDU :—“ Sir, I am seconding the amendment. The effect of the clause 4-A has been the subject of judicial examination, to-day. What the Lordships observed was ‘ What was intended to be validated was not only the invalidity, unlawfulness or impropriety or delay in communication, but also all such infirmities in the order or detention as well. The provisions of this section are very comprehensive and its language is ingeniously worded. It is possible to conceive that it might bring within its ambit defects which cannot be cured.’ In this connexion Their Lordships said it was instructive to quote the words of Justice Sir Lawrence Jenkins, who, in a case regarding the interpretation of section 4 of the Indian Press Emergency (Powers) Act, 1910 had said ‘ The provisions of section 4 are very comprehensive and its language is as wide as human ingenuity can make it.’ ‘ Indeed it appears to me to embrace the whole range of varying degrees of assurances from certainty on the one side to the very limits of impossibility on the other. It is difficult to see to what lengths the operation of this section might not plausibly be extended by an ingenious mind.’

[Sri B. Narayanaswami Nayudu] [17th November 1949]

“ This is what I said and want to repeat. I want to ask the Hon. Minister for Law whether the section is not ingeniously worded. Whenever there is an order of detention it must be upheld by the High Court. It is only there to register and not to invalidate. I say, Sir, it is far too much and not to be given.”

THE HON. SRI K. MADHAVA MENON :—“ I oppose the amendment Sir. I have already answered and justified the inclusion of clause 4-A. Defects, vagueness, insufficient or delay in the communication to the detenu should not invalidate the order of detention. We have tried to protect such things in cases of detention wherever necessary. But we cannot give a categorical assurance in this respect.

“ Dr. John was saying about guilt. There is no consideration of guilt here. This is only a preventive measure. It is to prevent such persons who induce others to violence or for some other reason, likely to act in a way which will be prejudicial to the public safety, even though they may not be guilty of any particular offence. If they are guilty of any particular offence we can take action under the ordinary law. It is not because they are guilty that they are detained. Therefore guilt does not at all arise. I can only say that when once the order is right from the point of view of the authorities concerned, other defects should not be allowed to invalidate the order. That is the idea behind the clause.”

The amendment was put to vote and declared lost.

Dr. V. K. John demanded a poll and the House divided as follows :—

Noes.

- | | |
|----------------------------------|-----------------------------------|
| 1 Hon. Sri C. Perumalsamy Reddi. | 8 Sri K. Manathunainatha Desigar. |
| 2 Hon. Sri K. Madhava Menon. | 9 Sri S. Jayaram Reddi. |
| 3 Hon. Dr. T. S. S. Rajan. | 10 Sri M. K. Sundarama Iyer. |
| 4 Sri B. Bhima Rao. | 11 Sri C. Veerabhadra Rao. |
| 5 Sri K. Venkataswami. | 12 Sri V. Nagappa Chettiyar. |
| 6 Sri N. Venkatachalamaji. | 13 Dr. P. S. Srinivasa Ayyar. |
| 7 Sri M. Narayana Rao. | |

Ayes.

- | | |
|--------------------------------------|-----------------------------------|
| 1 Dr. V. K. John. | 6 Sri R. Suryanarayana Rao. |
| 2 Janab Abdul Latif Farookhi. | 7 Janab K. T. M. Ahamed Ibrahim. |
| 3 Sri B. Narayanaswami Naidu. | 8 Janab K. Uppi. |
| 4 Sri M. D. T. Kumaraswami Mudaliar. | 9 Janab V. Hamid Sultan Maricair. |
| 5 Dr. Syed Tajuddin Sahib. | |

Ayes—9; Noes—13.

The amendment was declared lost.

DR. V. K. JOHN :—“ This is a very serious encroachment on the liberty of the subject and exclusion of the jurisdiction of courts. We cannot co-operate in the further discussion of the Bill and let the Congress take the responsibility to pass this into law. We would therefore, ask your leave, Sir, to leave the House.”

THE HON. SRI K. MADHAVA MENON :—“ We take the responsibility and the challenge, Sir.”

17th November 1949]

MR. PRESIDENT :—“ I do not think it is necessary that the Hon. Members should leave the House. It is possible to be inside the House and not take part if you like. I am anxious to preserve the dignity of the House.”

DR. V. K. JOHN :—“ We comply with your suggestion, Sir. We do not take any part in the further proceedings.”

Clause 4-A was then put and carried.

Clause 4-B was put and carried.

Clause 5 was put and carried.

Clause 6 was put and carried.

Clauses 7, 7-A, 7-B, 8, 9, 9-A, 9-B, 9-C, 10, 10-A, 10-B, 11, 12, 12-A, 13, 14, 15, 16, 17, 18, 18-A, 19, 20 and 21 were put to the House one after another and passed. 5-45 p.m.

Clause 1 and the preamble were put to the House one after another and passed.

THE HON. SRI K. MADHAVA MENON :—“ I move, Sir—
‘ that the Bill be passed into law. ’

Dr. Lakshmanaswami Mudaliyar said with regard to his criticism of the Bill, ‘ Give credit to us for the sincerity of our motives.’ I entirely agree with him, Sir. Objections have been raised to certain portions of the Bill on very legitimate grounds. It was done more as a sort of warning to the Government in the use of the powers that they were taking. Instances have been pointed out by the High Court where we have committed mistakes. We have to be careful and not commit mistakes hereafter. The Leader of the Opposition and other hon. Members who have strongly opposed the Bill really mean this : ‘ Some powers you ask us to give you. We have given you those powers. Instances have come to us where you have committed mistakes. Do not commit mistakes hereafter, because the powers that you have taken are such that might be made use of to curtail the liberties of the subject which we all love. Be careful in making use of these powers. No amount of warning will be too much in this case. That is why we have been strong in our attitude of opposition.’ I entirely agree, Sir. At one stage the members of the Opposition said, ‘ We do not want to take responsibility on our heads.’ I said that we would take the responsibility and therefore our responsibility becomes much more than under the ordinary circumstances. We have to entirely rely on our own resources. Therefore even though technically the Opposition is not taking part, we shall be more careful than they have asked us to be. The Leader of the Opposition said that the figures I gave about releases under *Habeas Corpus* were not correct. I have now verified the figures I gave in the lower House. The total number that we had in April 1949 was 1,169. The number released by the High Court from November 1948 to November 1949 is only 69. Sixty-nine is a small figure when it is considered that the releases have

[Sri K. Madhava Menon] [17th November 1949]

been on various grounds and not merely on *Habeas Corpus*. The fact that after an year's working of the Act, the number of detenues have been reduced from 744 to 655 and about 609 have been released in the course of the year shows that we have not acting recklessly but we have taken sufficient care. I therefore ask the House to give its entire support and I move that the Bill be passed into law."

MR. PRESIDENT:—"The question is that the Madras Maintenance of Public Order Bill, 1949 (L.A. Bill No. 24 of 1949), as passed by the Legislative Assembly be passed into law.

The motion was carried.

MR. PRESIDENT:—"Tomorrow morning I may not be able to be here. The Deputy President will take my place. I should like to be present when the Draft Rules under the Zamindari Abolition Bill are taken up. So I suggest to the Government that the Draft Rules may be taken up in the afternoon and the Essential Articles Control Bill be taken up in the morning."

THE HON. SRI K. MADHAVA MENON:—"I shall look into it, Sir."

The House then adjourned to meet again at 11 a.m. on Friday, the 18th November.

VI.—PAPERS PLACED ON THE TABLE OF THE HOUSE.

Orders passed so far on the various recommendations of the Madras Provincial Housing Committee.

வாய்மையே வெல்லும்
TRUTH ALONE TRIUMPHS